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Phones: (8172) 51-82-50, 51-46-12, 51-98-70

E-mail: vestnik-vipefsin@mail.ru, pennauka@vipe.fsin.gov.ru

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CONTENT

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On Journalism of the Russian Diaspora

GRIGORII S. STARODUBTSEV
Russian State University of Justice, Moscow, Russia, dexter77@list.ru

Abstract

Introduction: the article analyzes legal journalism of the European and Asian branches of Russian emigration. The activity of international lawyers in covering international legal events and analyzing relevant documents is shown. *Purpose*: to conduct a historical, legal and cultural analysis of scientific works of Russian emigrants as a socio-cultural phenomenon on the basis of currently available Russian-language publications, to reveal and highlight crucial aspects of scientific and publishing activities of international lawyers, which took place in specific conditions of the Russian abroad. *Methods*: theoretical methods of formal and dialectical logic, empirical methods of description and interpretation, textual and formal legal methods, comparative legal, analysis, generalization, and comparative historical. *Results*: a significant layer of international legal culture, accumulated by Russian emigration, is still closed by time and space. It is concluded that the Russian foreign science of international law has been created due to efforts of emigrant scientists. The conclusion is made about the inevitability of studying this rare, extremely valuable and prone to disappearing baggage of knowledge.

Keywords: emigration; foreign Russia; Russian diaspora; international legal diaspora; international law; science of international law; International Court of Justice.

5.1.1. Theoretical and historical legal sciences.

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Introduction

The 1917 October Revolution led to the mass exodus of Russian citizens to various countries up to 1922. Russian emigration is a unique phenomenon in world history in terms of its size and intensity [1]. It cannot be compared either with political emigration of Poles after 3 partitions of Poland in the 18th century, or with the French one that followed the 1789 revolution. It cannot be compared to the history of the disper-

sion of Jews or Armenians. This peculiar ethnocultural community developed rapidly in just a few years. Due to the figurative apt remark of international lawyer B.E. Nolde, the community, expelled from its Homeland and created its own "country" without physical and legal borders, was named foreign Russia or Russian emigrants.

The number of foreign Russians is estimated at two million people. This figure was most often used in the emigrant press [2]. "The largest number of emigrants was in Germany (500 thousand people), France (400 thousand people)" (according to the Sofia newspaper "Rus" of June 3, 1924, no. 3, p.12) [3], China (400 thousand people) and Poland (350 thousand people) (according to the emigrant newspaper "Rudder" of October 10, 1922, no. 567, p. 5). The number of emigrants in other countries was relatively small. So, in April 1922, there were about 20 thousand Russian emigrants in Bulgaria (according to the Berlin emigrant newspaper "The Day Before" of April 22, 1922, no. 22, p. 5), 7 thousand in Austria, 14 thousand in Estonia (according to the emigrant newspaper "Rudder" of October 5, 1922, no. 563, p. 5), etc. Yugoslavia welcomed 35 thousand immigrants from Russia, Czechoslovakia – 22 thousand, Romania and Greece – 50 thousand, the Baltic States and Finland – 100 thousand [1, pp. 34–35].

The emigration of Russian international lawyers had its own specifics. Its main directions were the following: 1. South – Constantinople and then Bulgaria, the Kingdom of Serbs, Croats and Slovenes (mainly Serbia), Czechoslovakia, France;

2. North-West – Finland, Sweden, Germany, Czechoslovakia, France;

3. East – China, then the USA.

Historically, the first centers of the Russian international legal scientific diaspora were Harbin, Constantinople and Berlin. Harbin remained so throughout the interwar period. In Europe, Berlin, Prague and Paris were alternately "capitals" of the Russian foreign science of international law.

The Russian scientific international legal diaspora had been formed by 1922 [3]. By that year, scientific organizations of Russian emigration had been established: Harbin, Constantinople, Bulgarian, German, Parisian, Czechoslovak, English, Italian, Estonian, Yugoslav and after a while North American academic groups. Since 1921, scientific papers were regularly published [4] and scientific congresses were convened. Many publishing houses were formed in emigration, hundreds of magazines and newspapers with international legal publications were printed [5]. The change in modern Russia's attitude to the work of emigrated scientists requires us to pay closer attention to the scientific heritage of the Russian emigration, whose publications (usually of small-circulation) penetrated the territory of the former Soviet Union less often than others.

In modern Russia, there are centers for the study of Russian emigration. Among them are the Russian State Library (RSL), the State Public Historical Library (SPHL), the All-Russian State Library for Foreign Literature (ARSLFL), the Russian Public Library named after Saltykov-Shchedrin (RPL), the Russian State Library of the Academy of Sciences (LAS), etc. The most significant fund of the Russian diaspora is concentrated in the Russian State Library – about 120 thousand Russian-language publications published abroad after 1917. Among them there are more than 650 emigrant journals and 250 newspapers [1, pp. 8–9].

The main difficulty in working with this kind of sources is determined by the search for journals, newspapers, and international legal articles in them, as well as the need to distribute texts. Poor-quality printing and fading of the text are additional problems. Characterizing the entire array of these sources, we note a high degree of informativeness and species diversity of the materials contained in it.

Journalism of the Russian diaspora has never been studied in Russian literature. The term "journalism" itself is interpreted in different ways, although there are no fundamental differences between them. In the context of this article, journalism is understood as a newspaper and journal genre of literature devoted to topical social and political issues, i.e. a set of newspaper and journal articles, pamphlets, discussing public interests [6].

The topic of this article had been taboo in Soviet international law science for decades. This clarifies the complete absence of Russian literature on the international legal research of Russian emigrants. The research available so far is devoted to general analysis of the cultural heritage of emigration – fiction and philosophical prose, journalism, literary criticism, etc. It

contains little or no information about international law literature of the Russian diaspora.

A lack of publications on this topic is connected, on the one hand, with its complexity, and, on the other, with the fact that in legal science a "combined" study of two streams of Russian legal thought and two communities of Russian legal scholars is still unfolding and only the first steps are being taken to consider them as two parts of a single whole. Such a problem has existed for a long time, but conditions for its solution in Russia developed only in the last decade of the XX century.

For the modern Russian science of international law, which is going through a difficult process of rethinking old ideas, it is extremely important to turn to emigrant legal thought, which continued the best traditions and high professionalism of pre-revolutionary international law science.

The purpose of the article is to conduct a historical, legal and cultural analysis of the international law science of Russian emigration as a socio-cultural phenomenon on the basis of currently available Russian-language publications, to reveal and highlight the most important moments of the scientific and publishing activities of international lawyers, which occurred in specific conditions of the Russian abroad.

The article does not contain an overview of publications in foreign languages, because they do not relate to journalism of the Russian diaspora. Works of Russian scientists were also published in foreign journals and newspapers, but they had been previously tested in Russian-language publications.

Research

The emigrant periodical press is of exceptional importance for understanding legal thought of the Russian diaspora. In emigration, there were many publications in which the problems of international law were widely covered. The most authoritative and popular journals were "The Coming Russia", "Modern Notes", "Law and Economy", "Jewish Tribune" (Paris), "Russian Book" and "New Russian Book" (Berlin), "Bulletin of Manchuria" (Harbin), "New Journal" (New York), as well as newspapers – "Latest News", "Renaissance", "Russia and Slavyanism", "Russian Thought" (Paris), "Rudder" and "The Day Before" (Berlin), "New Time" (Belgrade), "Rus" (Sofia), and "Russian Voice" (Harbin). Emigrant journals and newspapers described the life of legal institutions and published articles on international law and critical reviews.

Collections of scientific works by Russian scientists abroad are an important source of legal thought. We should mention "Law Faculty News" (12 volumes) in Harbin, "Proceedings of Russian Academic Organizations Abroad" (5 volumes), "Proceedings of Russian Scientists Abroad" (4 volumes), "Notes of the Russian Academic Group in the USA" (27 volumes), etc.

A huge amount of knowledge contains reference and information materials. There is extensive bio-bibliographic and encyclopedic literature published in Moscow, Belgrade, Boston, the Hague, London, Munich, New York, Paris and Prague. Based on the study of archival sources, new materials are introduced into scientific circulation.

New to historical and legal research is the technique by which the analysis of international legal thought of the Russian diaspora is carried out: the influence of isolation from Russia, activity in a foreign environment, the complexity of life and creativity in exile can be traced at various levels – from the generalized theoretical to the concrete practical.

A comprehensive analysis of journalism shows a picture of the life and work of international lawyers and reveals their works and basic scientific concepts. Based on their study, new materials are introduced into scientific circulation. The proposed work provides an overview of only a part of the works on international law published in journals and newspapers of the Russian diaspora. This is a small part of a huge scientific international legal array hidden from the reader. Scattered through thousands of archival documents; hidden from eyes of the researcher by reviews, references, petitions; accumulated in reports, lectures, abstracts, articles, monographs, personal letters and memoirs, it can be useful for teaching in modern Russian law educational establishments.

The intellectual international legal potential of Russian emigration is an integral part of the national heritage. It should be returned to its homeland, involved in domestic science and thoroughly studied. There should be no forgotten names in science. Each generation of lawyers has contributed to the development of international legal concepts. It is our duty to restore the past. The thoughts of scientists from

abroad in Russia can now significantly expand our understanding of many concepts of modern international law.

All editions are impossible to be considered. Their analysis, finding names, works, is the business of future scientists, as well as determining the volume of Russian foreign international legal periodicals. Having set ourselves a more modest task – to give a cursory overview of the Russian-speaking emigrant international legal literature – we will touch only on the most famous and authoritative journals and newspapers of the Russian diaspora.

In 1920, the weekly "Jewish Tribune" began to be published in Paris [7]. It was a collaboration of writers, publicists, and public figures. Among its regular authors were lawyers B.S. Mirkin-Getsevich (Mirskii), M.V. Vishnyak, A.N. Mandelstam, B.E. Nolde, B.E. Shatskii and others.

Articles devoted to international law occupied a worthy place in the scientific arsenal of the journal. M.V. Vishnyak wrote fruitfully, for example, "The Court of the League of Peoples and Protection of Minority Rights" (1920, no. 42); "The League of Nations and Minority Rights" (1922, no. 31 (136)), as well as "The Rights of Minorities and Societies of the League of Nations" (no. 34 (139)), "Minority Rights and the Split in the Union of Societies of the League of Nations" (no. 36 (141)).

"The Jewish Tribune" actively published B.E. Shatskii (no. 38 (143)) and especially B.S. Mirkin-Getsevich (no.145, 149, 151, 178) (under the pseudonym B. Mirskii). B.S. Mirkin-Getsevich's area of special legal interest was the international rights of national minorities. He wrote a series of articles on this topic, in particular, "Guarantees of the Rights of Minorities", "To the Meeting of the League of Nations in Geneva" (1921, no. 50), "Minority Rights" (1921, no. 55), etc.

B.E. Nolde collaborated fruitfully with the journal. He published the article "Minority Rights and International Law" (1920, no. 7) and an obituary on the death of V.M. Hessen (1920, no. 17). In the obituary, the scientist, in particular, wrote, "Russia is not just a collection of square miles and millions of people; it is a moral union of Russian citizens in the name of preserving and creating a great national culture".

Issues of international law were also presented on pages of the journal "The Coming Russia". It was the first large literary journal of the Russian diaspora, two issues of which were published in Paris. Both of its issues reflected international law problems. "The Coming Russia" has smoothly grown into the most famous magazine abroad, Modern Notes. "The Coming Russia" was the first emigration journal, in which B.E. Nolde made his debut. Subsequently, almost none of the significant emigrant publications could do without his works, including on international law.

The journal "Law and Economy" is also associated with the name of B.E. Nolde; he, together with B.E. Shatskii, was its editor. The journal was set up in Paris in 1925. "Law and Economy" was a special legal publication of the Russian diaspora. In addition to the editors, a number of prominent scientists from the Russian abroad took part in its publication, including international lawyer A.N. Mandelstam.

The journal "Modern Notes" is one of the few examples of literary longevity in emigration. The research section was interesting to read, much was written on legal topics, including problems of international law. International law topics were covered by G.D. Gurvich, B.E. Nolde, A.N. Mandelstam, M.I. Rostovtsev, V.V. Rudnev, S.A. Korf, B.S. Mirkin-Getsevich, K.N. Gul'kevich, Yu.N. Danilov, S.O. Zagorskii, and B.E. Shatskii. In the first issue of the journal, three articles on the issues of interest to us were published, in particular, "The League of Peoples and the International Court of Justice" by B.E. Nolde [8], "Federalism and Centralization in Modern America" by S.A. Korf [9] and 'The League of Nations and International Labor Legislation" by V.V. Rudnev" [10].

The decisions of the 1907 Hague Conference, the commission of ten lawyers established by the 1920 Milan Conference of the League of Nations Societies, and the Council of the League of October 27, 1920 regarding the Permanent International Court of Justice were published in the second issue of the journal. The famous scientist A.N. Mandelstam, being himself a participant in many international conferences, quite clearly and intelligently outlined the historical outline of the idea of the International Court [11].

The highlight of the fourth volume was an article by the leading scientist, historian and archaeologist M.I. Rostovtsev. According to him, "there is no book in modern scientific literature in which the question of the history of international relations and international law in the an-

cient world would be dealt with fully and thoroughly ...” [12, p. 128]. This research is certainly a notable event in the international legal literature of the Russian abroad. Written in amazing language, it faithfully presented answers to the questions posed by the author.

B.E. Nolde collaborated a lot and fruitfully with “Modern Notes”. In a considerable number of articles, he introduced readers to legal decisions of the most important international conferences and clarified international legal positions of a number of states.

B.S. Mirkin-Getsevich, a former associate professor at the Petrograd University, also worked closely with the journal. Being a specialist in the field of international law, he also wrote works on various topics. He gave an overview of the 1924 USSR Constitution [13] and the 1920 Czechoslovakia Constitution [14].

While in exile, scientists continued studies of peaceful means of dispute resolution that were so successfully carried out in pre-revolutionary times [15], especially international arbitration [16, pp. 103–113]. Separate pages of Baron M.A. Taube’s monograph “Eternal Peace or Eternal War” (Berlin, 1922), as well as M.A. Zimmerman’s “Essays on New International Law” (Prague, 1924) and “Intervention and Recognition in International Law” (Prague, 1926) were devoted to issues of international arbitration proceedings. M.A. Zimmerman gave a brief analysis of the Permanent Court of Arbitration, founded in 1899, and the mixed arbitration courts established after the First World War. Regarding the latter, he wrote, “These courts are created from two representatives from each interested state and a chairman chosen from among the lawyers of the state that was neutral in the World War”. Giving their assessment, he stated, “activities of these courts, in general, were imbued with the spirit of impartiality and justice” [17, pp. 265–266].

The analysis of theoretical foundations of international arbitration was undertaken by G.D. Gurvich. Having reported that “for the XIX century there had been 170 arbitration cases, while in the first 14 years of the XX century ...as many as 130 cases”, he concluded, “Arbitration proceedings of international legal disputes, i.e. proceedings based on a special agreement between the parties (the so-called compromise), to submit to the resolution of their dispute by judges specially called upon by mutual agreement, constitutes the oldest institution of international law, which was already used in Greece in the VII century BC” [18, p. 18]. The arbitration court differs from an ordinary one that its competence is determined by an agreement of the disputing parties (compromise), whereas the competence of an ordinary court does not depend on it at all” [18, pp. 21–22].

The research of scientists on international arbitration was of the global level and even surpassed it in some ways. Scientists’ ideas were so progressive for their time that they have not lost their value today. Embodied in a large number of existing international legal acts, they represent the basis of modern justice.

Problems of international law were reflected on pages of emigrant newspapers. The role of the Berlin newspaper “The Day Before” is noteworthy. International legal notes in it were mainly presented by its Editor-in-Chief, international lawyer Yu.V. Klyuchnikov. Starting from the first issue, the newspaper regularly informed readers about the printing of his book “At the Great Historical Crossroads…” and about its going on sale on April 1, 1922. After the specified period, it also regularly reported on the sale of the book in the Russian bookstore “Moscow” in Germany. The book was devoted to the analysis of international law problems the mankind faced after the World War.

I.N. Yutanin in his review of the book wrote, “Being a course of lectures, the book concisely outlines the author’s theses, giving them a justification that is too brief compared to the depth and difficulty of the issues discussed. Most of all, this remark can be attributed to the main idea of the book – the assertion of the autonomy of politics along with morality and law. This idea, by virtue of its originality and novelty, requires the widest theoretical and philosophical justification. However, even from the concise wording that the book gives, the dynamism of this idea clearly emerges, which requires the same skillful handling of itself as any explosive. The very essence of Yu.V. Klyuchnikov’s ideas is scary mainly because of its novelty” [23].

A series of publications on international legal issues was opened in the second issue of the newspaper by an article by Yu.V. Klyuchnikov “Russian Reparations”. The article was intended to clarify from the point of view of international law the illegality of the Western countries’ demands to Russia for compensation for all

losses caused by the Russian revolution and the civil war. Such a goal, according to Yu.V. Klyuchnikov, seemed important because "in official and business circles of the West there is ... a strong belief that Russia is obliged to compensate foreigners for all the losses incurred by them from the Russian revolution and from the decrees of the Soviet government. Getting on faith and with full internal satisfaction, the interested circles intensively cultivate the idea that "this is what international law requires". But since there is at least a shadow of sincere "conviction" and even a reference to "international law", and the position of infallible censors of good international morals, a dispute is not only possible, but obligatory. "Decorum and an outward form often play a crucial role in the mutual relations of states. It is one thing for the Russian delegation to find itself in Genoa in the position of a gross violator of the most sacred norms of international law. And it is a completely different matter if it turns out that proud judges of Russia, who have sentenced it in advance, can themselves be held accountable for deliberately perverting the meaning and letter of international law. That is why, on the eve of the Genoa Conference, I wanted to reconsider the issue of "revolutionary reparations" and recall how – in reality – it has been raised so far in the international legal theory and international practice [20, p. 3].

As for the theory, Yu.V. Klyuchnikov, referring to F.F. Martens, stated, "It seems impossible to me to assert that foreigners can claim greater protection of their personality and their property in the event of a civil war or revolution than local population of the country". "The principle of compensation and diplomatic intervention in favor of foreigners in case of damages suffered by them during civil wars has not been established by any people of Europe or America. Concrete international law is also by no means as cruel to states that have been economically weakened in the struggle for a better statehood as modern rulers of international destinies".

He referred to the doctrine of Argentine Foreign Minister Drago, who "categorically is against ... depriving the state, even if it recognizes its debt, of the opportunity to choose the method and time of payment at its discretion". The trend to protect weak states from strong ones was also manifested in the Hague Convention (II) of 1907 Respecting the Limitation of the Employment of Force for the Recovery of Contract Debts [20, p. 3].

Yu.V. Klyuchnikov also referred to a series of international agreements that established the principle of non-liability of governments for damage to foreigners during revolutions. He also pointed out cases of this principle being enshrined in domestic legislation, citing as an example Article 15 of the Venezuelan Constitution and its 1903 Aliens Act.

"The above references", Yu.V. Klyuchnikov concluded, "do not resolve the issue of Russian debts at the Genoa Conference, but I hope they give reason to contemplate. And the more the partners of the Russian delegation in Genoa would think about such certificates, the easier it would be for them to successfully solve their main task: to rebuild economic and political life of the modern world" [24, p. 3].

The pro-Soviet position of Yu.V. Klyuchnikov was noticed in Moscow. "The Day Before" of April 4, 1922, reported, "Professor Yu.V. Klyuchnikov has accepted G.V. Chicherin's offer to be an expert lawyer for the delegation at the Genoa Conference, and together with the delegation he leaves for Genoa" (no. 1 of March 26, no. 8 of April 4, 1922).

At the conference the discussion was continued. Yu.V. Klyuchnikov, referring to the amount of 62 billion francs in gold, which "Europe, i.e. the 28 noblest nations represented in Genoa, would like to receive from Russia", wrote the following, "... does this whole amount have to be shouldered by Russia? After all, over 25 million people separated from it, forming now independent Poland, Latvia, Lithuania and Estonia. And wasn't it considered the main unshakeable norm of modern international law that when a part of the territory is separated or when it is transferred to another state, part of the debt of the metropolis is transferred to the separated part? ... But they will tell us, "Russia itself, in the agreements concluded with Poland, Latvia, etc., voluntarily refused all "redemption" payments from those who were separated. We will answer this: this refusal concerns Russia, but not those who gave money and it is optional for them. This, again, corresponds to the norms of current international law" ("The Day Before" of April 19, 1922, no. 19).

International law issues were reflected in the monthly journal "Bulletin of Manchuria", journals "Bulletin of Asia", "Bulletin of Chinese Law",

"Bibliographic Bulletin of the Central Library of the Russian Railways", "Issues of School Life", "Boundary", "Russian Review" (Beijing – Harbin); collections of the "Union of Teachers", "Bulletin of the Manchurian Pedagogical Society" and "Day of Russian Culture", newspapers "Light", "Our Day", "Tatiana's Day", "Lawyer's Day", "Russian Voice, "Dawn", a one-day newspaper published by the Bureau for Russian Emigrants, "Harbin Time", "February 19th", "Herald of Harbin", "Morning' (Tianjin), "Russian Word" (Harbin, 1926–1934), "Bulletin of Manchuria" (Harbin), "Military Thought" (Harbin), "Forward" (Harbin), "Smoke of the Fatherland" (Harbin), "New Shanghai Life" (1924-1926), "News of Life" (Harbin), "Russian Echo" (Shanghai), "Siberian Life" (Harbin), "Shanghai Life" (1919–1922), "Shanghai Dawn", "Manchuria" (Harbin – Manchuria), "Monday" (Harbin), etc. [35]. Since the end of 1922, a weekly "Student Newspaper" was published in Harbin on Sundays under the editorship of A.M. Dmitriev.

The journal of Russian emigration in China was the "Bulletin of Manchuria", published in Harbin from 1923 to 1934. Almost all teachers of the Law Faculty published their publications in it. Issues of international law were discussed by M.Ya. Pergament, V.V. Engelfeld, M.N. Ershov and others.

M.Ya. Pergament presented a legal analysis of the "Minutes of the meetings of the Diplomatic corps" in Beijing in the period from October 26, 1900 to May 21, 1920 in his well-thought article "On the Legal Nature of the So-Called Diplomatic Quarter in Beijing". The work was published in two issues of the journal "Bulletin of Manchuria" in 1926 (no. 6, pp. 4–18; no. 7, pp. 3–14). This extremely informative article, richly accompanied by footnotes and quotations, was widely known in scientific circles of Russian emigrants in China. G.K. Gins, V.V. Engelfeld and other authors constantly referred to this article in their discussions on international law.

The content of the article fully corresponded to its title. "This essay is dedicated specifically to the Beijing Diplomatic Quarter... There is no monographic literature about the quarter at all. Courses and textbooks on international law are more than scanty on its account, either not touching it at all, or touching it only very, very briefly" [22, p. 5].

The scientist gave his definition of the diplomatic quarter, "The diplomatic quarter in Beijing is a precisely delimited area of land provided by China to the states that signed the 1901 Final Protocol, as public law destinators of this area, for its exclusive use and with the right to: a) autonomous management within it for this purpose, as well as; b) bringing it into a state of defense and; c) the maintenance by each of the aforementioned powers of a permanent guard in the interests of protecting diplomatic missions, which missions are located within the same area, each on its own piece of land belonging to it by right of ownership" [22, p. 5].

"So, for the use or special use of missions – that's what the diplomatic quarter is designed for", concluded M.Ya. Pergament, "and therefore, as a lawyer, I do not hesitate to recognize as legitimate any claim of the missions to create the most convenient or favorable conditions for it. But I do not go ahead and even believe it unacceptable to go ahead if one does not want, without sufficient reason, to belittle the rights of the counterparty, i.e. in the present case, China, whose intentions were not to include a wider range of rights as exceptions to the general rule of law" [23, p. 7].

In the article "On the Legal Nature of the So-Called Diplomatic Quarter in Beijing", M.Ya. Pergament also touched upon some issues of private international law. So, having given his definition of the diplomatic quarter in Beijing, M.Ya. Pergament pointed out that this piece of land did not have the qualities of supreme power, sovereignty and state territory. "Hence there appears a legal position of private international law, such as logusregitactum, i.e. a form of the transaction is determined by the place of its commission, fully applicable to the diplomatic quarter". Having mentioned Article 11 of the 1896 German Civil Code and Article 9 of the 1865 Italian Civil Code and referring to Article 7 of the 1923 Civil Procedural Code of the RSFSR, the author argued that it would be only about Chinese legislation.

"Let the legal deal be made in the diplomatic quarter, in essence, let the deal be German. Where is, according to German law, the form for this transaction? Is the form dictated by laws of the diplomatic quarter in Beijing? Obviously not – we repeat, there is no such form. And obviously, we can and will only talk about the form prescribed by Chinese laws... The definition, construction, understanding, doctrine, which were cited and, possibly, used by members

of the diplomatic corps in Beijing ... are nothing more than subjective illusions and arbitrary postulates of legally insufficiently informed diplomats-politicians", concluded M.Ya. Pergament [23, p. 11].

The journal "Bulletin of Manchuria" repeatedly addressed issues of international law. Thus, unequal contracts and foreign shipping companies in China were highlighted by M.N. Ershov in the article "Foreign Shipping in the Waters of China" published in the fifth issue of the journal in 1931. The study was not original, since it presented key provisions of the article of the same name prepared by the anonymous Chinese author F.F.A. and published in the March issue of the English-language "Chinese Economic Journal" in 1931.

V.V. Golitsyn, a graduate of the Law Faculty in 1928, was an aspiring international lawyer. He published an article "The Beginning of a New Era in China's International Relations" [24] reviewed by G.K. Gins (News of the Law Faculty, 1931, vol. 9, p. 296). According to the reviewer, V.V. Golitsyn's work "suffers from ... a lack of theoretical data on the nature of unequal contracts and invites readers to consider" Page 86 of his work "Law and Force".

V.V. Golitsyn should be excused. At the beginning of his research, he noted, "In this article, we do not set out to analyze this system (China's treaties with other states – the author's note) and its assessments from one point of view or another... However, we should preface presentation of our topic with a brief indication of general foundations of the system of unequal contracts, and give a brief overview of its characteristic features... In ordinary trade treaties... the basis for agreements is the principle of equality and reciprocity... This is the logical principle of communication between peoples, as the father of international law Hugo Grotius pointed out ... Completely different grounds are contained in unequal treaties of China. Complete inequality is their characteristic feature. All benefits under these agreements are received only by China's counterparties, along with the fact that it receives nothing, except that it has committed itself to obey and endure the heavy and unfair regime of capitulation" [24, p. 275].

The author focusing on "giving an analysis of China's early treaties with foreign powers concluded on the basis of equality and reciprocity, studied provisions of China's international treaties with Chile of February 18, 1915, Bolivia of 1919, Persia of 1920, Germany of May 20, 1921, and Austria of October 19, 1925.

V.V. Golitsyn came to the following conclusion, "these treaties have not yet created a system of new contractual bases in its international legal practice. These agreements only marked the beginning of those milestones, which are now a practical incentive for the already existing new system, built on the principles of equality and reciprocity, agreements of the Republic with foreign states" [24, p. 288].

In his work, V.V. Golitsyn widely used works of the Soviet scientist B.D. Rosenblum "Essays on the Contract Law of China" (Kharkov, 1928" and "Bibliographic Review of Literature on China's International Relations" by V.V. Engelfeld [25].

In the review, V.V. Engelfeld wrote, "In this essay, we mean to use only those works of Chinese writers and scientists that are written in European languages". The author divided essays on China's international relations into 3 groups. "The second group", he noted, "are legal treatises that describe certain institutions of international law as applied to China and generally treat the subject from the legal side. ... Collections of China's international treaties with foreign countries occupy a special place" [25, p. 4].

Having analyzed a decent number of historical works, V.V. Engelfeld noted, "The past of China's international relations with the West is often highlighted in essays on China and publications dealing with modern international legal problems of the Middle Republic". Among legal authors focusing on historical presentation, V.V. Engelfeld singled out the work of Koo "The Status of Aliens in China" (in English, 1912) and the one of Doo "The Position of Foreigners in China" (Russian translation by Sofoklov) (Harbin, 1918).

V.V. Engelfeld concluded, "These authors, well-known Chinese lawyers educated abroad, give, on the basis of European and partly Chinese materials, a Chinese version of the events that served as the key to the modern international legal situation of China and accompanied the emergence of extraterritoriality and other exclusive rights and privileges of foreigners in China" [25, p. 6].

V.V. Engelfeld also considered international legal literature published in the USSR. In the Soviet Union acts and documents of the Wash-

ington Conference on Arms Limitation were issued [25, p. 10].

Summarizing his research, V.V. Engelfeld wrote, "From the above review, the reader will see that the modern literature on China's international relations is extremely extensive. A big gap, however, is the lack of our own writings covering this topic in their entirety. To do this, one has to turn to foreign sources, which are not always impartial and objective and acquaintance with which presents some difficulties for the average Russian reader and learner" [25, p. 10].

Texts of international treaties were also published in China in Russian, for example, in appendices to the Bulletin of Chinese Law. "In view of the general interest in the content of those historical international documents that should form the basis for discussing occupation of major Chinese cities in Southern Manchuria by the Kwantung Army on September 18 this year (1931 – the author's note), texts of "The Covenant of the League of Nations", "The Nine-Power Treaty" signed on February 6, 1922 and "The Kellogg–Briand Pact" signed on August 27, 1928 are given below" [26].

The Harbin newspaper "Russian Voice" (no. 546, May 3, 1922) published a full text of the treaty of Soviet Russia with Germany in Rapallo 1922 and further reported (no. 646, October 4, 1922) that the Russian-Manchurian Bookselling Partnership offered for sale "Regulations on the Application of Foreign Laws". Issues 3-4 (1925) of the journal "Bulletin of Manchuria" presented the text of the Convention on the Basic Principles of Relations between the USSR and Japan of January 20, 1925 in the article "The USSR and Japan", as well as notes of the Soviet representative (Ambassador to China Lev M. Karakhan) and the Japanese ambassador to China (pp. 105–108).

Conclusion

These are just some of the international legal publications that have found their place in Russian-language publications. A significant layer of international legal culture, developed by Russian emigration, is still closed by time and space. But what has been found, analyzed and highlighted indicates that the Russian foreign science of international law was created through the efforts of emigrant scientists. The scientists themselves actively participated in international law-making, as well as in the activities of interstate arbitration bodies.

The scientific potential accumulated on pages of periodicals is an important component of the cultural heritage of Russian emigration. A modern scientist should not give up this rare, extremely valuable and prone to disappearing baggage of knowledge. Its involvement in scientific circulation will contribute to improving the quality of domestic international legal developments.

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INFORMATION ABOUT THE AUTHOR

GRIGORII S. STARODUBTSEV – Doctor of Sciences (Law), Professor, professor at the Department of International Law of the Russian State University of Justice, Moscow, Russia, dexter77@list.ru

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Cultural-Historical Jurisprudence as a Meta-theory in the Field of General Humanitarian Training of Penal System Employees

VYACHESLAV V. SHAKHANOV
Vladimir Branch of the Russian Presidential Academy of National Economy and Public Administration, Vladimir, Russia
Vladimir Law Institute of the Federal Penitentiary Service, Vladimir, Russia
Shakhanov.vyacheslav@mail.ru, https://orcid.org/0000-0003-1251-7886

Abstract

Introduction: general humanitarian training of penal system employees should be built taking into account understanding of law as an independent meta-structure. It includes both available knowledge and a whole complex of cognitive tools used at different levels of scientific knowledge. A metatheory is one of the elements of this cognitive system. It brings liberation from conceptual layers and reveals a true meaning of the phenomenon. Cultural-historical jurisprudence can be considered a legal metatheory. One of its developers was recently deceased Professor Yu.A. Vedeneev. *Methods*: abstraction, induction, empirical analysis, logical reduction, general scientific and philosophical justification. *Purpose*: to demonstrate capabilities of cultural-historical jurisprudence in the field of overcoming methodological isolation of certain areas in jurisprudence using heuristic potential of the theory of legal anthropology and sociology of law. *Conclusion*: some aspects of cultural and historical jurisprudence can be used in the penitentiary sphere, for example, in legal education of convicts; to understand a system of relations in the thieves' environment; to describe various aspects of the delinquency theory; to overcome conflict situations in the penitentiary sphere, etc. Thus, one of the areas of cultural-historical jurisprudence, anthropology of law, is aimed at studying man as the central element of legal communication, the primacy of man in relation to the law. It is this emphasis in legal education that can allow a convicted person to accept law as a value. The study of patterns of forming relationships in the thieves' environment can receive a new impetus due to a specific object of legal anthropology, such as the thieves' law. The anthropology of law makes a significant contribution to the formation of the theory of crime and the disclosure of meta-problems of crime. Another component of the subject of cultural-historical jurisprudence, sociology of law, includes legal conflictology as one of the areas. Its knowledge is necessary to overcome conflict situations that accompany penal system employees in their professional activities.

Keywords: cultural-historical jurisprudence, anthropology of law, sociology of law, metatheory, legal education of convicts, "thieves' law", legal conflictology, metacategories.

5.1.1. Theoretical and historical legal sciences

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Introduction

The reason that has prompted the author of this article to disclose the problems indicated in its title is caused by two independent, but closely related issues. *First*, penitentiary science is positioned, as a rule, in an applied way. Such an approach does not contribute to its development. So, it is limited and methodologically lame. Perhaps it is this fact that gives rise to discussions regarding the viability of the term "penitentiary science" itself [1]. The groundlessness of these discussions was brilliantly proved by Professor R.A. Romashov [2, pp. 239–243]. We believe that the solution to the problem outlined above lies in the sphere of a different understanding of disciplinary boundaries. *Second*, penitentiary science faces serious challenges. It should contribute to the formation of comprehensive legal thinking in penal system employees. To perform official duties, penal system employees should holistically perceive, evaluate and forecast the situation outcome, have knowledge not only in the professional field, but also in related disciplines, be able to work in conditions of instability and uncertainty. And here it should be noted that "it is not the set of competencies, but the level of thinking that determines the competitiveness of a specialist in the labor market" [3, p. 15].

Law as a meta-structure

Usual dichotomies and disciplinary barriers in the penitentiary sphere require a well-thought-out epistemological rapprochement strategy. Interdisciplinary and transdisciplinary approaches should be used to form systematic legal thinking. Such symbioses are increasingly being positioned in legal science. Professor R.A. Romashov considers it possible "to talk about penitentiary law as an intersectoral normative community uniting both specialized legal acts and acts indirectly related to penitentiary communications" [2, p. 242]. This actualizes the use of the above-mentioned approaches. Penitentiary science needs new cognitive models, methodological vaccinations, and perhaps more significant transformations. Research in the penitentiary sphere should be carried out with the involvement of various "level" tools based on the level of scientific knowledge used [4]. We agree with S.A. Bochkarev that modern knowledge of law "should include ideas about this law as an action, process and activity, simultaneously realized at the micro, macro, mega and meta levels" [5, p. 118].

Any legal discipline periodically needs an upgrade, a transition to a new level for further evolutionary development. Even such a seemingly well-established discipline in its structural and substantive part as "the theory of the state and law", according to reputable scientists, needs deep modernization. Thus, Professor V.M. Baranov proposes a consistent transformation of the "basic course of the theory of the state and law into the fundamental discipline of jurisprudence" [6, p. 219]. At the same time, the respected scientist proceeds from the fact that law is an independent meta-structure, "independent meta-relationships, a real multilevel, dynamic meta-state" [6, p. 219].

So what are all "meta categories" mentioned above? In jurisprudence, terminology is often used that changes semantic boundaries of an object phenomenon. Sometimes prefixes "meta" and "post" are used for this purpose. In the first case, there is a transition from the theory to a meta-theory, from the language of law to a meta-language of law, from the institution to a meta-institution, from the legal characteristic to a meta-legal characteristic, from modern law to meta-modern law, etc. The prefix "meta" is translated from Greek as "over, over, between, through, after" and means going deeper into the basics and studying the self of any phenomenon. For example, a meta-theory is considered as a way the theory self-learns [7, p. 35].

A "logical-mathematical" definition of the meta-theory existing in science needs a humanitarian refraction, since only the methodology of a wide range of meta-theoretical tools

remains in the "dry residue". Then why all this "rebranding"? If we proceed solely from formal logical approaches to understanding methodology and legal thinking, then we can conclude about their uselessness, and in a broad sense, the uselessness of all fundamental science. The absurdity of such statements is obvious and does not need a detailed argument. And here is an example of such a misconception, "It turns out interestingly: a person, overwhelmed by delusions, passions and vices, hopes to create perfect tools of self-regulation, worshipping his own inventions and fetishes. A person will be able to achieve this goal only if he stops constructing the supposedly existing "legal thinking" – fantasies of the second social order, but begins to correctly reflect rooted cultural traditions and formulate them in convenient and accessible, generally recognized and generally meaningful expressions" [8, p. 43]. Comments are unnecessary here.

The prefix "post" is translated from Latin as "after" and means rethinking, abandoning the old in favor of creating a new one. With the help of this prefix, the names of a number of philosophical trends (post-modernism, post-constructivism, post-structuralism) are formed. Post-classical studies are being conducted in legal science. I.L. Chestnov sees the post-classical theory of law as an "umbrella term" covering a number of promising research programs and approaches: "anthropological program, semiotics of law, constructivist direction, cultural, pragmatic or realistic concept, naturalistic theory of law" [9, pp. 27–28]. Yu.A. Vedeneev speaks of post-jurisprudence as jurisprudence without state and law [10, p. 12]. A monograph by E.V. Skurko with the intriguing title "Post-law" is published [11]. So, post-law is considered as "a consequence of the reflection in the sphere of law of the simplification and primitivization of social, economic, cultural and other ties and relations, their degradation, both in this society and within the state and (or) interstate relations" [11, p. 14].

Obviously, the prefixes "meta" and "post" generally have different meanings, but their semantic boundaries intersect in one of the meanings – "after" There is a similar situation with the understanding of the term "freedom". Its interpretation depends ontological roots – European or domestic. The European approach promotes two types of freedoms, such as "freedom from" (freedom from conscience, duty, justice) and "freedom for" (freedom for achieving certain goals). This (European) approach is often destructive. This is an instrument of immoral behavior, which, unfortunately, is sometimes resorted to by political elites. The domestic approach tends to other terminological forms, feels the need not for freedom, but for liberty. Ordinary people were inclined to gain liberty [12, p. 47]. Returning to the question of the ratio of words formed using the prefixes "post" and "meta", we believe that in the first case it is often freedom ("freedom from" or "freedom for"). The semantic context of words with the prefix "meta" is more like liberation in the form of liberty, although in its specific sense – liberty turned inward, into the depth of a cognizable phenomenon. It brings liberation from conceptual layers, reveals a true meaning of the phenomenon.

Meta-theoretical thinking is comparable to methodological thinking, but it is not identical thinking, since a meta-theory and methodology are not the same thing, as we mentioned earlier. Meta-theoretical thinking has its own methodology, which differs from thinking at a different level (empirical and theoretical). The purpose of meta-theoretical thinking is to establish "prerecursive principles" [13, p. 224] aimed both at developing certain rules of the cognitive process and establishing the semantic component of the cognizable phenomenon [14, p. 18].

Cultural and historical jurisprudence

The formation of meta-theoretical thinking is facilitated by the sphere of general humanitarian training of penal system employees. The dynamically developing directions in humanitarianism are disciplines located at the junction of legal, social and cultural. As Yu.A. Vedeneev notes, "there is a whole fan of epistemological possibilities for combining various disciplinary complexes hidden here. Their appearance has a significant impact on the general landscape and architecture of science itself as a historical form of existence and reproduction of social systems in terms of a certain socioculture, its language and discourse" [15, p. 119]. Cultural and historical jurisprudence is one of these areas. Yu.A. Vedeneev outlined his views

on cultural and historical jurisprudence in the monographs “Grammar of law and order” [16, pp. 142–147, 185–195] and “Jurisprudence: phenomenon and concept. Introduction to the genealogy of the language of conceptual paradigms” [15], as well as in his publications in periodicals [17; 18].

The subject of cultural and historical jurisprudence is not yet a dogma, since it has not been widely discussed and, accordingly, cannot be the result of scientific consensus. In general terms, it was formulated by Yu.A. Vedeneev. He included sociology and anthropology of law in it. Specific study objects of the anthropology of law are “legal custom, legal pluralism, community law, legal awareness and legal culture, as well as normative systems of various subcultures, such as, for example, “thieves’ law” [19, p. 89]. The latter aspect of anthropological analysis (thieves’ law) is the area of scientific interest of penitentiary science. Here it is necessary to proceed from the fact that “various social groups produce their own rules and norms of behavior, creating intricate interweaving of many legal quasi-orders that enter into complex relations with the official, state, legal order” [20, pp. 10–11].

The anthropology of law may be in demand in the field of legal education of convicts. Earlier, we have already drawn attention to the need to change the technology of legal education of convicts. Some prisoners, due to their unfree state, have a negative attitude towards any manifestations of dictatorship on the part of the state, including dictatorship of the law. It is necessary to use approaches that allow us to look at this dictatorship from a different angle and accept the coercive force of the state as a conscious necessity. The theory of natural human rights can act as a kind of soft power, which is usually considered as a basis in relation to the superstructure in the form of positive law. In some cases, it is advisable to move from promoting legal knowledge to understanding its essence and deep foundations [21, p. 13].

The anthropological approach with its consideration of law as an integral part of human culture in the eyes of convicts will look less conflictual than considering law as a product of the state, the will of the ruling class. Such an approach also looks more productive in connection with the topical question, whether it is possible to “consider growing chaotic mass of laws, decrees, regulations, rules, orders as law, or we are dealing with some fiction, imitation of law, increasingly alienating the “little man”? [20, p. 2]. Unfortunately, this issue is becoming rhetorical.

Anthropology of law is developing at the junction of the history of law, the theory of law, ethnology and biological law. It is aimed at studying man as the central element of legal communication, the primacy of man in relation to the law. It is this emphasis that can encourage a convict to accept law as a value. Anthropology allows us to trace the process of interaction of biological and social patterns of development, emphasizing characteristics of man as a biological being, but having features that distinguish him from the animal world system (spirituality, social qualities, cultural aspects of being).

Socialization does not exhaust the life content of a person who, by his existence, dialectically connects spiritual and material forms of being. It is not sociality that distinguishes a person from an animal, but spirituality. “However, human spirituality is imperfect, therefore imperfection, expressed in a destructive, including criminal, way of human actions, is an inherent quality” [22, p. 140]. Anthropology of crime should be the initial link in solving metaproblems of crime [23, p. 6]. Grounds for criminal behavior cannot be reduced to the sum of external conditions.

The methodology of cultural and historical jurisprudence should obviously be based on hermeneutical-dialectical philosophy, which considers “the understanding of the phenomenon itself in its one-time and historical concreteness” [24, p. 45]. Focusing on cultural and historical issues, it should be taken into account that “a mere fact of the anthropological research development in philosophy does not automatically guarantee the fact of improving general humanitarian training of specialists” [25, p. 274].

To understand the impact of culture on the development of law, the views of academician V.S. Stepin are also of interest. Considering law as a complex self-developing system characterized by transitions to different types of self-regulation, he speaks about hierarchical organization of elements inherent in this phe-

nomenon. The emergence of new levels of organization is accompanied by differentiation of law, a change in the type of self-organization, and phase transitions. The indicators of the phase transition are changes in culture, and above all in the value system [26, pp. 156–160].

We believe that cultural and historical jurisprudence will reduce the negative effect caused by the fragmentation of law, when an integral object of knowledge breaks up into many fragments. "Keeping even general ideas of this mosaic array in one person's memory becomes impossible, as, in fact, the guidance of these ideas in everyday life. Genuine law is being replaced by its surrogate in the form of arbitrary interpretations and comments" [20, pp. 7–8].

Another component of the subject of cultural and historical jurisprudence is sociology of law, with legal conflictology being one of its areas. Its knowledge is necessary to overcome conflict situations that accompany penal system employees in their professional activities. Conflict is a characteristic of the human environment. Legal conflict is determined by the inconsistency between the legal concept of reality and the real state of affairs. It should be distinguished from related legal phenomena, primarily such as a legal contradiction and a dispute in law (legal dispute). In the legal plane, a dispute and a conflict are considered as stages of a legal contradiction. The analyzed terms can be used at different levels of scientific knowledge, acquiring new contexts.

Conclusion

The intersection of legal, social and cultural is the starting point in the search for answers to many questions in the field of humanities, but not all approaches in this direction are identified and developed.

A "logical-mathematical" definition of the meta-theory existing in science needs a humanitarian refraction. It brings liberation from conceptual layers and reveals a true meaning of the phenomenon. Cultural and historical jurisprudence can be considered as a legal meta-theory.

Penitentiary science needs interdisciplinary approaches that allow the use of conceptual tools and methods from different fields of scientific knowledge, overcoming scholastic development. Conceptual borrowings should be of an auxiliary nature, be a reference point in the development of one's own problematization without replacing the latter.

In the field of humanitarian training of penal system employees, it is necessary to integrate knowledge on cultural and historical jurisprudence by synthesizing achievements into the unified conceptual framework. It should be built taking into account the understanding of law as an independent "meta-structure", which will create favorable conditions for the formation of meta-theoretical thinking necessary for decision-making in conditions of instability and uncertainty.

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INFORMATION ABOUT THE AUTHOR

VYACHESLAV V. SHAKHANOV – Candidate of Sciences (Law), Associate Professor, associate professor at the Department of the Theory and History of State and Law of the Vladimir Branch of the Russian Presidential Academy of National Economy and Public Administration, Vladimir, Russia; associate professor at the Department of Public Law Disciplines of the Vladimir Law Institute of the Federal Penitentiary Service, Vladimir, Russia, Shakhanov.vyacheslav@mail.ru, https://orcid.org/0000-0003-1251-7886

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On Legal Regulation of Criminal Liability for Rioting

ELENA B. KURGUZKINA
Central Branch of the Russian State University of Justice, Voronezh, Russia, torbagan1@mail.ru, https://orcid.org/0009-0008-1305-0740

NATAL'YA A. VLASOVA
All-Russian Research Institute of the Ministry of Interior of Russia, Moscow, Russia, itakan@mail.ru, https://orcid.org/0000-0003-3395-1796

Abstract

Introduction: the article considers problems related to the criminal law qualification of mass riots with an emphasis on crimes committed in penitentiary institutions. *Purpose*: on the basis of a comprehensive study of the norms of criminal law regulation and the practice of applying legislation in relation to mass riots, to develop proposals for improving norms stipulating liability for rioting. *Methods*: structural-logical, inductive-deductive, comparative-legal, statistical, sociological, etc. *Results*: general description of the state and dynamics of mass riots is given and controversial issues of the concepts "mass riots" and "destruction of property" are considered. Drawbacks in normative statements and alogisms in the formulation of concepts are revealed, in particular, disproportion of definitions used in the law and tautology. Controversial issues of elements of the composition of mass riots are studied. *Conclusion*: based on the norms of criminal law and extensive empirical material, possible directions for improving qualification of mass riots committed, including in penitentiary institutions, by persons serving criminal sentences are outlined. The necessity to improve and clarify the conceptual apparatus used in the criminal law norm regulating liability for rioting is emphasized. Proposals for betterment of Article 212 of the Criminal Code of the Russian Federation are made. The concept of mass characterization in the qualification of riots is proposed. There is a need to include the concept of "mass riots" in the form of a note in Article 212 of the Criminal Code of the Russian Federation. A distinction is made between criminally punishable mass riots and mass riots punishable by administrative proceedings. The necessity of specifying the types of violence included in the composition of criminally punishable mass riots is proved. The definition of pogrom and its differences from violence in mass riots are formulated. In the disposition of Part 1 of Article 212 of the Criminal Code of the Russian Federation is proposed to include not only the destruction, but also damage to property during mass riots.

Keywords: mass riots; violence; pogrom; convict; penal system; Federal Penitentiary Service.

5.1.4. Criminal law sciences.

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Introduction.

Crime in the field of public safety undoubtedly causes significant harm to normal living conditions of the society. The list of criminal acts established by the legislator also includes such a type of corpus delicti as mass riots (Article 212 of the Criminal Code of the Russian Federation). This criminal act is highly dangerous, since it is often associated with destabilization of the situation at the place of its commission and involvement of a significant number of people in it.

Analysis of criminal statistics data shows that the state of this type of crime (in a narrow sense) ranged from 15 crimes in 2009 to 9 in 2023. Moreover, the largest number of such cases for the 15-year period was registered in 2021 – 41 cases. In 2009, 43 persons were identified who participated in criminally punishable mass riots, and in 2023 – 41 persons. The largest number of persons brought to criminal liability turned out to be 115 people in 2021. An absolute decline in mass riots (basic) is 60%. The rate of decline of mass riots (basic) for the same period is 40%.

Discussion.

Despite a relatively small number of the studied type of crime in the total mass of crime, its study requires close attention precisely because of its mass character and significant danger to normal functioning of state authorities and operation of the entire social structure of the state and society.

It is crucial to study the norm regulating criminal liability for mass riots (Article 212 of the Criminal Code of the Russian Federation), since there are certain theoretical problems in its design, wording, and interpretations, difficulties to implement it in practice and the lack of uniform understanding.

The generic object of this composition should be recognized as public relations in the field of public safety. It should be noted that Article 3 of the Federal Law No. 390 of December 28, 2010"On Security" provides for the need to organize scientific activities in the field of security. However, the current law, unlike the Federal Law of 1992, does not fix its definition. Though Article 1 of the Law of the Russian Federation No. 2446-1 of March 5, 1992 "On Security" (currently invalid) defined security as follows: "the state of protection of vital interests of the individual, society and the state from internal and external threats". Vital interests were interpreted as "a set of needs, the satisfaction of which reliably ensures the existence and opportunities for the progressive development of the individual, society and the state". The law determined key security objects, such as "the individual – his/her rights and freedoms; the society – its material and spiritual values; the state – its constitutional system, sovereignty and territorial integrity".

A specific object of the crime under investigation is the social relations that develop to maintain public order, normal activities of public authorities, work of institutions, organizations, and officials, etc.

An immediate object is the public relations related to the protection of safe existence of people, state and public institutions from specific acts listed in the norm in the form of violence, pogrom, arson, destruction of property, use of weapons, etc.

In addition to the main objects in these acts, it is assumed that there are additional ones, since Article 212 of the Criminal Code of the Russian Federation describes ten different corpus delicti, such as attacks on life, health, property and others. Basically, dispositions of the article norms on mass riots are designed as formal (with the exception of property destruction).

In case of mass riots accompanied by property destruction, property is a crime object. Since the legislator does not specify which destruction of property entails criminal liability in case of mass riots, it should be assumed that this applies to any property. Although the legislator does not specify its affiliation, it should still be considered that it should be alien to the perpetrator. It seems that the destruction of perpetrator's property should not constitute a part of this crime. The judicial practice shows that other people's property was destroyed during riots.

In particular, on March 28, 2018, the Abakan City Court of the Republic of Khakassia accused the citizen T. of committing a crime under Part 2 of Article 212 of the Criminal Code of the Russian Federation, who, "having criminal intent to participate in mass riots accompanied by pogroms, arson, destruction of property of a correctional institution, ... while in the premises of detachment No. of the correctional facility No. 35, destroyed the following property: two bedside tables ..., a PVC window No. ..., a PVC window No. ..., three lamps "LPO 2*36"

..., an interior door (the door of the detachment head room No.) ... as a result, it caused property damage to the correctional institution for a total amount of... The commission of the above-mentioned criminal acts by the citizen T. together with other prisoners significantly violated (destabilized) the procedure for serving sentences established in the correctional facility No. 35 of the Directorate of the FPS of Russia ...., threatened the life and health of a large number of people, and led to the violation of public order and public safety [1]".

In some cases, the official position of the victim is a qualifying factor.

In general, the construction of Article 212 of the Criminal Code of the Russian Federation does not meet deontic modality requirements, general principles and logic of building norms of criminal law, has inaccuracies in normative statements (judgments) and alogisms in the formulation of concepts: disproportionality of definitions used in the law; tautology; conditioning of the unknown through the unknown; as well as violates requirements of consistency of prescriptions and certainty of the law [2, p. 230; 3; 4].

Traditionally, norms establishing criminal liability are arranged in the article incrementally: the main composition, then qualified, then specially qualified. Article 212 of the Criminal Code of the Russian Federation is designed differently: each part of it contains an independent corpus delicti. The link between parts is an act related to mass riots. All the main provisions of this article are set out rather vaguely and in most cases are evaluative in nature.

An objective side of the act provided for in Part 1 of Article 212 of the Criminal Code of the Russian Federation consists in organizing rioting accompanied by the consequences specified in the law or committed by certain actions. The Criminal Code of the Russian Federation does not define a concept of mass riots. In the theory of criminal law science, various definitions of this concept are proposed. So, V.N. Grigor'ev considers mass riots as "deliberate actions committed by a large group of people (a crowd), encroaching on the foundations of public order and security and accompanied by pogroms, destruction, arson and other similar actions or armed resistance [5, p. 5]".

S.K. Kudashkin defines mass riots as "socially dangerous actions of a large group of people, accompanied by pogroms, arson, violence, destruction of property, use of weapons, explosive devices, explosives, toxic or other substances and objects that pose a danger to others, armed resistance to a representative of the authorities [6, p.103]".

These definitions do not contain any mass riots elements at all. The characteristics indicated in the above definitions are not inherent in the riots themselves, but are crucial for criminal liability. The very concept of mass riots is not defined at all.

Certain features of the concept in question can be distinguished by analyzing norms of the Administrative Code of the Russian Federation. So, based on the meaning of Article 20.2.2 of the Administrative Code of the Russian Federation, mass riots include mass simultaneous stay and (or) movement of citizens in public places, public calls for mass simultaneous stay and (or) movement of citizens in public places or participation in mass simultaneous stay and (or) movement of citizens in public places, if mass simultaneous stay and (or) the movement of citizens in public places has caused violation of public order or sanitary norms and rules, violation of the functioning and safety of life support or communication facilities, or causing damage to green spaces, or interfering with the movement of pedestrians or vehicles or access of citizens to residential premises or transport or social infrastructure facilities, caused harm to human health or property, if these actions do not contain a criminally punishable act, or mass simultaneous stay and (or) movement citizens, accompanied by actions (inaction) committed in the territories, directly adjacent to hazardous production facilities or to other facilities, the operation of which requires compliance with special safety regulations, on overpasses, railways, railway right-of-way, oil and gas- and product pipelines, high-voltage power transmission lines, in the border zone, if there is no special permission from authorized border authorities, or in territories directly adjacent to the residences of the President of the Russian Federation, buildings occupied by courts, or territories and buildings of institutions executing penalties in the form of imprisonment, if these actions do not contain a criminally punishable act.

Rioting provided for in Article 20.2.2 of the Administrative Code of the Russian Federation, if it is accompanied by violence, pogroms,

arson, property destruction, use of weapons, explosive devices, explosives, toxic or other substances and objects that pose a danger to others, as well as armed resistance to a representative of the authorities, entail criminal liability (Part 1 of Article 212 of the Criminal Code of the Russian Federation). We find criminally punishable elements of mass riots haphazardly arranged.

The analysis of Article 212 of the Criminal Code of the Russian Federation discloses the following independent elements of crimes: a) organization of criminally punishable mass riots; b) preparation for the organization of criminally punishable mass riots; c) preparation for participation in criminally punishable mass riots; d) inducement, recruitment or other involvement of a person (actually incitement) in the commission of criminally punishable mass riots; e) participation in criminally punishable mass riots; f) calls for criminally punishable mass riots; g) calls for participation in criminally punishable mass riots; h) calls for violence against citizens; i) taking part in training for organizing criminally punishable mass riots; k) taking part in training for participating in criminally punishable mass riots.

A number of compositions and features duplicate each other, are not specified, and are too evaluative.

A mass character element is of indefinite character. What should be considered a mass of participants sufficient for criminal liability? The answer to this question is important, since this criterion distinguishes between mass riots (Article 212 of the Criminal Code of the Russian Federation) and other criminal acts committed not in connection with mass riots (for example, provided for in Articles 115, 116, 167, 213 of the Criminal Code of the Russian Federation, etc.).

How many people should make up the required mass? There is an opinion that the number of people in this situation should be sufficient to block traffic and pedestrian traffic at any moment, disrupt a mass event and the work of various institutions and organizations, i.e. control the situation in a large area [6, p. 99; 7, p. 47].

K.A. Vdovichenko believes that a mass character in relation to Article 212 of the Criminal Code of the Russian Federation is present if “public order is violated by joint actions of a significant number of people. Moreover, this number should form a crowd, a mass of people” [8, p.155]. Nothing concrete, essential, or inherent only in this phenomenon is seen in the presented definitions of a mass character.

According to A.M. Bagmet, rioting is illegal activities of a large number of people [9, p. 83; 10, p. 126]. M.K. Kumysheva uses a term “crowd” when defining a mass character, although she stipulates that mass riots can manifest themselves outside the crowd. To determine quantitative characteristics of mass riots, she makes reference to the Decree of the Government of the Russian Federation No. 72 of March 25, 2015 “On Approval of Requirements for Anti-Terrorist Protection of Places of Mass Stay of People and Objects (Territories) Subject to Mandatory Protection by the Troops of the National Guard of the Russian Federation, and Forms of Security Passports of Such Places and Objects (Territories)”, proposes considering gatherings of over 50 people to be mass, and suggests fixing it in the Note to Article 212 of the Criminal Code of the Russian Federation [11, p. 80]. It is difficult to agree that, for example, 10, 15, 40 people will not be able to take part in rioting.

So, on April 6,2021, the Maiminsky District Court of the Altai Republic convicted 18 people under Part 2 of Article 212 of the Criminal Code of the Russian Federation, since “being accused and detained as a preventive measure, or sentenced to imprisonment and held in cells ..., they intentionally, realizing that by their actions they commit a socially dangerous act capable of endangering public safety, cause material damage to the state, as well as disrupt normal operation of an institution designed to hold suspected and accused persons in respect of whom detention has been chosen as a preventive measure, and also to perform functions of correctional institutions in relation to convicts in accordance with the penal legislation of the Russian Federation, and wishing this, acting contrary to the established rules of the internal regulations of pre-trial detention facilities of the penal system, ... out of revenge for the lawful actions of employees of the pre-trial detention center of the Directorate of the FPS of Russia in the Altai Republic, in particular, an unscheduled search in the cell and removing a TV-set from the cell, made a table and two benches rickety, torn out supports of these furniture items

mounted in the concrete floor and moved them to the front door of the cell and barricaded it from the inside, that is, they took part in mass riots accompanied by pogroms. They tore the NTV-D2115AHD video camera from its attachment point and made it completely unusable, causing property damage in the amount of 9,823 rubles to the pre-trial detention center of the Directorate of the FPS of Russia in the Altai Republic" [12].

According to the court verdict, the described events were classified as mass riots.

V.A. Kozlov, having conducted a retrospective analysis of the practice of applying criminal liability for mass riots, concludes that the quantitative criterion is 300 people [13, p. 22].

S.V. Rozenko notes that the concept of "a mass character" should be classified as conditionally evaluative and a number of participants may be very different, but not less than two persons [14, p. 29].

According to Ya.I. Ivanenko, such a negative phenomenon as rioting cannot be accurately defined in legislation without considering the evaluation criterion, while mass character is the action of a crowd [15, p. 194].

S.K. Kudashkin considers mass riots as those that involve a large (more than three people) group of people [6, p. 103].

We believe that this problem should be solved comprehensively, recognizing that mass participation involves more than two people and assumes commission of criminally punishable mass riots. In other words, not only a quantitative feature, but also a qualitative one, which is integral to it, makes it possible to correctly assess all the circumstances of a criminal case and make the right decision.

Constructing the disposition of Part 1 of Article 212 of the Criminal Code of the Russian Federation, the legislator indicates violence as one of features of criminal mass riots. In addition to this rather general term, there is no specification of it in the norm. Based on this, the concept of violence can be interpreted in different ways.

In the explanatory dictionary of D.N. Ushakov, violence is defined as the use of physical force to someone or the use of force, forced influence on someone or something.

In the legal sense, violence can be not only physical, but also mental. However, this thesis is not indisputable. According to a number of legal scholars, in criminal law, violence should be identified only with physical impact, in other words, with harm to health [6, p. 722; 17].

Analysis of scientific literature allows us to conclude that there are various types and varieties of violence: bodily, informational, intellectual, instrumental, property, and sexual [18; 19].

Noteworthy is the definition of violence in the criminal legal sense proposed by N.G. Krylov: the criminally unlawful socially dangerous physical or mental intentional impact on another person in spite of himself or against his will, committed by a subject of the crime personally or with the help of certain means, tools or mechanisms [20].

What should be included in the concept of violence in relation to Article 212 of the Criminal Code of the Russian Federation and what types of violence should be qualified under Article 212 of the Criminal Code of the Russian Federation without additional qualification? There is no indication of this in the legal norm. A.M. Bagmet and V.V. Bychkov believe that the acts provided for in Articles 115, 116, 112, Part 1 of Article 111, Part 1 of Article 131, Part 1 of Article 132, Part 1 of Article 318 of the Criminal Code of the Russian Federation are covered by the disposition of Article 212 of the Criminal Code of the Russian Federation without additional qualifications [21, p. 37].

K.G. Vdovichenko believes that rape, violent acts of a sexual nature, violence against government officials are not covered by the disposition of Part 1 of Article 212 of the Criminal Code of the Russian Federation and are subject, if committed during mass riots, to additional qualification under the relevant article of the Criminal Code of the Russian Federation. She clarifies that rape and sexual violence do not fall under elements of violence, since violence, from her point of view, is only a way of committing sexual crimes. Regarding violence during mass riots against government officials, she draws an analogy with the explanation of the Plenum of the Supreme Court of the Russian Federation on hooliganism, recommending qualification according to the totality of crimes provided for in Part 2 of Article 213 of the Criminal Code of the Russian Federation and the corresponding part of Article 318 of the Criminal Code in case of violence against a representative of power during the commission of hooliganism [8].

The position of S.K. Kudashkin is rather inconsistent, considering violence within Part 1

of Article 212 of the Criminal Code of the Russian Federation (dangerous to life and physical and mental health), but immediately adding that serious harm to health or murder during mass riots should be qualified according to the totality of crimes [6, p. 104].

According to V.G. Pavlov, violence that accompany mass riots can be not only physical, but also mental, which includes, among other things, the threat of violence in the form of death threats, harm to health of varying severity, destruction or damage to property. From his point of view, physical violence includes serious (Article 11 of the Criminal Code of the Russian Federation), moderate (112 of the Criminal Code of the Russian Federation), light (Article 115 of the Criminal Code of the Russian Federation) harm to health, beatings (Article 116 of the Criminal Code of the Russian Federation), torture (Article 117 of the Criminal Code of the Russian Federation), murder (Article 105 of the Criminal Code of the Russian Federation). However, he believes that causing serious harm to health and murder go beyond the limits covered by the disposition of Article 212 of the Criminal Code of the Russian Federation (however, he does not substantiate these statements) [22].

V.B. Borovikov and V.V. Borovikova argue that violence characteristic of rioting (Part 1 of Article 212 of the Criminal Code of the Russian Federation) includes mental violence, that is, threats of physical violence, for example, murder, causing any harm to health, torture, beatings, committing acts that cause physical pain or restriction of freedom. In addition, it includes physical violence, covering harm to human health of any degree (including acts provided for in parts 1–3 of Article 111 of the Criminal Code of the Russian Federation), as well as beatings, torture, infliction of physical pain, restriction of freedom of movement [23]. Moreover, this violence during mass riots is intentional. The researchers believe that when separating from administrative liability for the use of violence during mass simultaneous stay and (or) movement of citizens in public places, it should be assumed that in case of an administrative tort, violence is used negligently. This opinion is quite controversial.

Such a variety of approaches to understanding violence in the disposition of Part 1 of Article 212 of the Criminal Code of the Russian Federation is explained by the legal uncertainty of this feature. After all, if one refers to "violence" in the form that it is laid down in the norm, then additional qualification in any case of violence is not required, including causing moderate serious harm to health, murder, as well as all other acts committed with the help of violence (robbery, robbery with violence, rape, sexual violence, kidnapping, unlawful confinement, etc.).

In order to eliminate uncertainty and ensure uniformity in the application of the element "violence", it is advisable in Article 212 of the Criminal Code to specify types of violence, the use of which in mass riots form the analyzed corpus delicti, in order to distinguish cases in which there is a need for either additional qualifications or the application of a particularly qualifying norm from Article 212 of the Criminal Code of the Russian Federation (if amended). It seems that the disposition to specify "violence" should be amended on the pattern of Part 1 of Article 112 of the Criminal Code of the Russian Federation by indicating the absence of those consequences of violence that appear to be aggravating and require additional qualifications. These qualifying and particularly qualifying circumstances can be specified in parts 1.1 and 1.2 of Article 212 of the Criminal Code (respectively excluding Part 1.1 in the current version), such as causing serious harm to health, rape, sexual violence and, if necessary, others.

Commission of pogroms is another element of criminally punishable mass riots. There is even less certainty about this element than about "violence". Most legal scholars interpret the concept "accompanied by pogroms" in relation to Part 1 of Article 212 of the Criminal Code of the Russian Federation as deliberate destruction of dwellings, premises, other buildings, property, transport, means of communication, often accompanied by violence against people, bullying them, committing murders, causing various degrees of severity to health, rape, sexual violence, assaults, robberies, hooliganism, violent encroachments on material valuables and citizens, looting of homes, shops, warehouses, destruction and damage of tools and means of production, equipment and household items[7; 24; 22, p. 43; 6, p. 104; 25, p. 428].

Summarizing this approach, A.M. Bagmet defines a number of common elements of pogrom in modern Russian legislation in the form

of violence, destruction of property and arson, noting that these components, in fact, duplicate some independent elements of criminally punishable mass riots specified in Part 1 of Article 212 of the Criminal Code of the Russian Federation. In this regard, he proposes to exclude "pogroms" from Part 1 of Article 212 of the Criminal Code of the Russian Federation as overloading the semantic meaning of the disposition of the criminal law norm establishing liability for mass riots [2, pp. 78–79, 83].

Judicial and investigative practice adheres to the above-mentioned concept of understanding the term "pogrom". So, citizens D., G. and A. were convicted by the Krasnoyarsk Regional Court under Part 1 of Article 212 of the Criminal Code of the Russian Federation for organizing mass riots, accompanied by pogroms and arson, in the Temporary Detention Center for Foreign Citizens, which is a Police structural subdivision, intended for detaining foreign citizens and stateless persons, subject to administrative expulsion outside the Russian Federation, deportation or readmission. Being drunk, citizens D., G. and A refused employees of the Center to open a room where women were held at night, organized mass riots by calling on detainees to join. They gave orders to close and break video cameras, throw mattresses into the corridor and set fire to them, and threatened those detainees who refused to take part in mass riots. As a result, a lock on the door was broken, three mattresses were damaged, and a bench was broken. At the same time, the court considered it a pogrom, as four video cameras were torn from the wall and the door was locked because of a broken lock [26].

We hardly agree with this qualification of pogrom, as well as with the understanding of pogrom in the legal literature. In the explanatory dictionaries of S.I. Ozhegov and N.Yu. Shvedova, as well as the New Dictionary of the Russian Language T.F. Efremova, pogrom is understood as chauvinistic actions of some national or other population groups, accompanied by robbery and mass murders.

In the Explanatory Dictionary of the Russian Language by D.N. Ushakov, pogrom is defined as reactionary-chauvinistic actions organized by the government or ruling classes, in particular, mass beating of some population group by a crowd, accompanied by murders, destruction and robbery of property (for example, Jewish pogroms in Russia, Poland, Romania, and Germany, Armenian pogroms in Turkey).

The Large Legal Dictionary interprets pogroms as mass spontaneous violent actions directed against religious, national or racial minorities, as a rule, inspired by extremist organizations or the police of a reactionary government [27]. According to the Encyclopedic Dictionary of F.A. Brockhaus and I.A. Efron, the term "pogrom" is defined as "an open attack by one part of the population on another, accompanied by violence against a person, theft or damage to someone else's property, or invasion of someone else's home or an attempt on these crimes, under the influence of motives stemming from religious, tribal or class hostility, or from economic relations or from disturbing public peace rumors" [28].

Based on the analysis of this traditional approach to understanding the essence of the concept "pogrom", the actions associated with it do not duplicate such elements of criminally punishable mass riots as violence, arson, destruction of property, and armed resistance to government representatives. It cannot be recognized as a mistake or a flaw of the legislator to include a qualifying factor of pogroms, since acts should be considered as such if they are chauvinistic, nationalistic in nature, or are associated with religious and other similar conflicts, that is, stem from a specific motivation. In this regard, in the given example of the verdict, the court should have qualified the organizers' actions as mass riots involving violence, destruction of property, but not as a pogrom.

We propose to consider pogrom, within the framework of the disposition of Part 1 of Article 212 of the Criminal Code of the Russian Federation, as a chauvinistic, nationalist, religious or similar underlying open attack by one part of the population on another, accompanied by any form of violence against a person, appropriation or destruction of someone else's property, violation of other constitutional rights and freedoms of victims subjected to such an attack.

There are disputes in criminal law science about elements of mass riots in the form of destruction of property. The object of destruction of property during mass riots can be any property: movable or immovable. Destruction, apparently, involves the destruction of property to such an extent that it cannot be restored and there is no possibility of further posses-

sion and (or) use of this property. The methods of destruction can be any: breaking, smashing, including with the help of objects used as a weapon, as well as by explosions, arson, the use of chemicals, etc. Moreover, the value of the destroyed property, judging by the disposition, does not affect the qualification of the act under investigation. The only exception may be the provision of Part 2 of Article 14 of the Criminal Code of the Russian Federation on the insignificance of the act. In other words, both large-scale damage and minor damage do not affect qualifications. Some authors draw attention to the fact that damage to property during mass riots remains outside the scope of criminal liability. In light of this, it is proposed to amend the wording of Part 1 of Article 212 of the Criminal Code of the Russian Federation, specifying in the disposition not only destruction, but also damage to property in any way [9, p. 80].

It is proposed to exclude such an element as arson during mass riots, since, according to some scientists, it is included in "destruction of property".

We cannot agree with this point of view. It should be remembered that in addition to criminal liability, there are other types of liability, including administrative. And liability for damage to property is provided for administratively punishable mass riots (Article 20.2.2 of the Administrative Code of the Russian Federation).

It seems that the way out should be sought in the differentiation of administrative and criminal liability for mass riots, accompanied by destruction and damage to property, depending on the amount of damage. Since property damage may be insignificant during destruction, and in case of damage it may be large and especially large. Therefore, in case of mass riots, damage should be associated not with the degree of destruction of other people's property, but with the amount of losses. At the same time, it is necessary to identify generally dangerous (arson, explosions, etc.) methods of destruction or damage to property as qualifying factors that strengthen criminal liability for these acts.

So, the Kutarkalim District Court of the Republic of Dagestan sentenced the citizen P. to 3 years in prison under Part 2 of Article 212 of the Criminal Code of the Russian Federation for taking part in mass riots on September 20, 2019, while serving his sentence in the correctional facility No. 7, during which he committed destruction of property with other prisoners by pogrom, causing property damage to the total amount is 4,455,141.07 rubles [29].

In this verdict, pogrom is indicated as a method of destroying property, which from our point of view is incorrect, since the concept of pogrom, which we have already mentioned, is different and is associated with different goals and motivations. But the amount of damage resulting from the destruction and damage to property is quite large, which makes it possible to bring a person to criminal liability, although damage to property during mass riots should currently entail criminal liability. In connection with the above, we believe that destruction or damage to property during mass riots, which caused minor damage (for example, less than 2,500 rubles), in the absence of other qualifying factors, should be attributed to an administrative tort.

Results.

Article 212 of the Criminal Code of the Russian Federation describes ten different types of crime, in which, in addition to the main one, additional objects are assumed. They can be attacks on life, health, property and others. Basically, the dispositions of the norms of the article on mass riots are designed as formal (except for destruction of property). Since the legislator does not specify which destruction of property entails criminal liability in case of mass riots, it should be assumed that this applies to any property.

Usually, the norms establishing criminal liability are located in the articles of the Criminal Code of the Russian Federation incrementally: the main composition, then qualified, then specially qualified. Article 212 of the Criminal Code of the Russian Federation is designed differently: each part of it contains an independent corpus delicti. The link between the parts is an act related to mass riots. Key provisions of this article are set out rather vaguely and in most cases are evaluative in nature.

Criminally punishable elements of mass riots, from our point of view, are arranged rather haphazardly.

A mass character should be imputed to the participation in the act of more than two people (that is, beginning from three) and the organically inseparable commission of their constituent actions included by the legislator in criminally punishable mass riots. In other words, not

only a quantitative feature, but also a qualitative one, which is integral to it, makes it possible to correctly assess all the circumstances of a criminal case and make the right decision.

It is advisable to specify the types of violence, the use of which in mass riots form the composition under study, in order to distinguish cases in which there is a need for either additional qualifications or the application of a particularly qualifying norm from Article 212 of the Criminal Code of the Russian Federation (if amended). It seems that the changes in disposition regarding the specification of the element "violence" should be formulated according to the model of the construction of Part 1 of Article 112 of the Criminal Code of the Russian Federation.

We propose to consider pogrom, within the framework of the disposition of Part 1 of Article 212 of the Criminal Code of the Russian Federation, as a chauvinistic, nationalist, religious or similar underlying open attack by one part of the population on another, accompanied by any form of violence against a person, appropriation or destruction of someone else's property, violation of other constitutional rights and freedoms of victims subjected to such an attack.

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INFORMATION ABOUT THE AUTHORS

ELENA B. KURGUZKINA – Doctor of Sciences (Law), professor at the Department of Criminal Procedure Law of the Central Branch of the Russian State University of Justice, Voronezh, Russia, torbagan1@mail.ru, https://orcid.org/0009-0008-1305-0740
NATAL'YA A. VLASOVA – Doctor of Sciences (Law), Professor, Chief Researcher at the All-Russian Research Institute of the Ministry of Interior of Russia, Moscow Russia, itakan@mail.ru, https://orcid.org/0000-0003-3395-1796

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Significantly about the Insignificant: Practice of Applying Part 2 of Article 14 of the Criminal Code of the Russian Federation (In-Depth Analysis of the Problem)

NIKITA A. KOLOKOLOV
A.S. Griboyedov Moscow University, Moscow, Russia
Moscow Pedagogical State University, Moscow, Russia
nikita_kolokolov@mail.ru

Abstract

Introduction: this publication continues the research of the paired category "significant – insignificant" in criminal law, covered in the previous issue of the journal. It is carried out through the prism of requirements imposed by society on criminal proceedings. *Purpose:* to more deeply study some theoretical aspects of the problem, to get closer to understanding the essence of some aspects of judicial discretion, and to analyze reviews of the latest judicial practice. *Methods:* historical, comparative legal, dialectical cognition, analysis and synthesis. Results: the criminal law doctrine of insignificance is studied in detail. Four relatively independent periods of its evolution (pre-revolutionary (1845–1917), post-revolutionary (1917–1958), developed socialism (1958–1991) and post-Soviet (since 1991)) are identified. The institution of "small size" (1965–1982) is criticized. The author analyses situations when courts at the precedent level, "torpedoing" the severity of the crimes indicated by the legislator, seek options to release certain persons both from criminal liability and criminal punishment. The author comes to the following conclusions: there is no single interpretation of the concepts of significant and insignificant in the theory of Russian criminal law; since algorithms for the application of Part 2 of Article 14 of the Criminal Code of the Russian Federation, as well as similar criminal legal regulations (for example, Part 6 of Article 15 of the Criminal Code of the Russian Federation) are still developing, in which a dispute inevitably arises about the significance of what has been done, society has to rely on the level of interpretation art of a particular judge. A growing number of lawyers propose to bring the problem of the insignificance of an act to the discussion of the Plenum of the Supreme Court of the Russian Federation. In subsequent articles, the reader will be offered a substantive analysis of the practice of applying Part 2 of Article 14 of the Criminal Code of the Russian Federation contained in the decisions of the First General Jurisdiction Court of Cassation.

Keywords: insignificance of an act (Part 2 of Article 14 of the Criminal Code of the Russian Federation); paired categories; criminal law; fundamental principle of law; freedom of judicial choice; public danger; punitive law; offense; offense provided for by the Administrative Code of the Russian Federation; criminal misconduct; virtual (alleged) benefit of punishment; real social harm of punishment; judicial practice; unity of judicial practice.

5.1.1. Theoretical and historical legal sciences.

5.1.2. Public law (state law) sciences.

5.1.4. Criminal law sciences.

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Crime: rational and irrational.

As noted in the previous publication [1], the analyzed institution "insignificance" has been known to the theory of law since the time of Ancient Rome, even then lawyers formulated a judgment "summum jus, summa injuria" (exact observance of the law (maxim) is sometimes equal to the highest lawlessness (Cicero – de officiis, I, 10, 33 Terentius – Heatontimorumenos, IV, 5). Literal interpretation of law does not resolve a conflict sometimes, but generates a new injustice. It is no coincidence that the above-mentioned judgment has been elevated to the rank of fundamental principles of law in some countries (for example, in France) [2]. Unfortunately, this principle has not found its place in the current Russian legislation and its study is beyond the scope of curricula and the vast majority of courses on criminal law.

Besides, it is noted in the previous publication focused on doctrinal interpretation of the current legislation that the distinctive characteristic of an act enshrined in the law and qualified as a "crime" (Part 1 of Article 14 of the Criminal Code of the Russian Federation) recognizes special social significance of the deed. It is quite obvious that the Criminal Code of the Russian Federation of 1996 was not developed from scratch; what is more, the current criminal law is a kind of collective image, or more precisely, a set of many compromises suffered by previous generations of lawyers. The question arises when and under what circumstances there were revealed and recognized ideas, embodied in criminal law and applied in everyday investigative, prosecutorial and judicial practice.

At the current moment, almost all existing judicial systems in the world and the technologies inherent in their functioning are the product of the industrial era (20th century and even 19th century). It is quite obvious that many of them at some point simply will not find a place in a post-industrial society. A "classic judicial office" is being rapidly replaced by an "office", still called judicial by inertia, but already largely virtual [3].

What does the coming day have in store for us under such circumstances? The answer to this question can be found in the writings of Daniel Bell (1919–2011) "The End of Ideology. On the Exhaustion of Political Ideas in the Fifties". Cambridge, 1960), "The Coming Post-industrial Society". New York, 1973) and "The Cultural Contradictions of Capitalism". New York, 1976). If the classics of Marxism-Leninism believed, "the state machine peculiar to industrial society is a "parasite" that must necessarily be completely replaced by something new", while they persistently urged revolutionaries, discarding "petty-bourgeois illusions of peaceful development of democracy", to turn to violence, then according to D. Bell "there is no need to destroy old world to the ground", because the state and law, as well as other achievements of civilization, may well be useful to a new post-industrial society.

In other words, answering the question to what extent the present is determined by the past, D. Bell suggested not to throw away socio-legal values of the past. He is far from alone in this. According to his contemporary, the philosopher S.N. Bulgakov (1871–1944), "in the life of both an individual and a people, their past has a huge influence" [4]. Socio-legal technologies, even if developed by society in the very distant past, are those facets of the invaluable experience of mankind that underlie its modern rational behavior. At the same time, it is indisputable that the real transformation of society entails modernization of both the system of government as a whole and the administrative apparatus – the state, including such an important element of it as the court – an institution to find a clear line between "criminal" and "not criminal" [3]. Let us analyze key stages of the formation of the category of "crime" in Russia.

Generally recognized traditions of the development of Russian criminal law. As you know, roots (sources) of the Russian criminal law go back to ancient times, days of "Russian Truth" and "Sudebniks" of 1449, 1497, 1550. It is there that one can find the first arguments of the legislator about the crime. However, basic concepts and technologies of modern criminal justice were developed and consolidated in the XIX century.

During the reign of Nicholas I (1796–1855), under the leadership of the head of the Second Department of His Imperial Majesty's Own Chancellery, Count D.N. Bludov (1785-1864), on the basis of old Russian legislation, domestic

judicial practice, and criminal laws of European states, a kind of codification of Russian criminal law was carried out. The document developed at that time was named the "Code of Criminal and Correctional Punishments", first considered by the State Council, further approved by the Emperor on August 15, 1845 and put into effect on May 1, 1846.

The first section of the Code "On the nature of crimes and misdemeanors" stipulated that "any violation of the law through which a person encroaches on the inviolability of the rights of the supreme authority and the authorities established by it, or on the rights or safety of society or individuals is a crime" (Part 1). "Violation of the rules prescribed to protect certain rights and public or personal safety or benefit defined by laws is called an offense" (Part 2). "For crimes and offenses, according to the nature and degree of importance thereof, the perpetrators are subject to criminal or correctional punishments" (Part 3). "An evil done accidentally, not only without intent, but also without any negligence on the part of the one who has committed it, is not considered a guilt" (Part 7).

So, authors of the Code, defining the essence of a crime (an offense), use the term "evil"– a certain criminal result, materializing and concretizing thereby the reality of illegal activity consequences. The absence of "evil" (consequences), as well as the absence of guilt of a particular person in causing evil", eliminates criminality, and therefore punishability of the act.

"Evil" is a normative and evaluative category of moral consciousness (values, norms are an ideal that reflects practical experience). Thus, "evil" is everything that receives a negative assessment from people, censure. In Christianity, the category of "evil" is historical, the doctrine authors proceeded from the fact that "evil" would eventually be defeated. The philosopher Andre Comte-Sponville (b. March 12, 1952) interpreted the category of "evil", referring to the teachings of the rationalist Baruch Spinoza (1632–1677), very broadly, "Evil is everything that separates us from the human ideal" [5. pp. 196–197]. Below we read, "a villain is a person who behaves like a criminal or, more often, like a scoundrel" [5. p. 197].

In the modern sense, in accordance with the Russian language dictionary by A.P. Evgen'eva "evil" means everything bad, harmful, "a villain" is the person who has committed a crime, and "a scoundrel" is a "mean person".

So, the Code, unlike the current Criminal Code of the Russian Federation of 1996, did not lump together crimes (acts truly dangerous) and offenses (acts that are not characterized by public danger).

The rejection of the institution of "criminal offense" in 1917 deprived both the legislator and the law enforcement officer of the freedom of maneuver they needed, both in qualifying the act committed and in imposing punishment. There is no definition of insignificance in specific acts in the Criminal Code of the Russian Federation, at the same time, the possibility of its hypothetical identification, at least theoretically, is not excluded (Part 2 of Article 14 of the Criminal Code of the Russian Federation).

Let us assume that "insignificance" enshrined in criminal law is nothing more than just a figure of speech. The extreme brevity of the wording chosen by the legislator is a hint that the norm on "insignificance" provided for in Part 2 of Article 14 of the Criminal Code of the Russian Federation, by and large, is not for everyday use. To some extent, the analyzed construction is similar to the mention in the Criminal Procedural Code of the Russian Federation that "a verdict may be acquittal or indictment" (Part 1 of Article 302), since it is quite obvious that society expects guilty verdicts from the court. Justification is a flaw in the work of the prosecution. As for populist arguments regarding a small number of acquittals, the authors of these judgments diligently avoid answering the question: what the state should do if the crime is committed by a person, and the defendant is acquitted.

Once again, we emphasize that the general structure of legislation is such that the law enforcement officer has to look for individual "traces" of insignificance, in other, not at all criminal, laws, for example, in Article 7.27 of the Administrative Code of the Russian Federation.

As for representatives of legal science, the obvious imperfection of the design of the current law forces them to look for parameters of insignificance in the works of classics, both domestic criminal law and specialists from other countries. For example, C. Beccaria (1738–1794) wrote, "a true measure of crimes is the harm they cause to society" [6, p. 226].

The authors of the French Declaration of the Rights of Man and of the Citizen (1989) disclosed the concept of crime as "actions harmful to society". This legal idea is preserved in the Criminal Code of France in 1992: "the severity of the harm caused to society is what determines the legal essence of a criminal act. Only encroachment on public values constitutes a crime and offenses" [7, p. 35].

It seems advisable to divide the coverage of the problems of "significance" and "insignificance" in Russian legal science into four large periods:

1) pre-revolutionary (1845–1917);
2) post-revolutionary (1917–1958);
3) developed socialism (1958–1991);
4) post-Soviet (1991 – present).

1. Pre-revolutionary period (1845–1917).

We believe that the problems analyzed in this series of articles ("significance" and "insignificance") in the theory of Russian criminal law were revealed for the first time and best of all by Professor N.S. Tagantsev (1843–1923). The researcher setting out his views on "Criminal act as a subject of study" in the Course of his lectures on Russian criminal law, already in the first subtitle of the Introduction indicated simple concepts, such as: 1) "life event", 2) "manifestation of personality", 3) "social phenomenon", 4) "subject of anthropology" and, what is important, only at the very end, 5) "legal relation" [8. p. 1].

Since that time, the theory of Russian criminal law has been characterized by the following approach in the arrangement of categories to be studied according to their significance: "criminal act", "its scope", "criminal law" ("norm"), "culprit" [9, pp. 376–380].

It is noteworthy that N.S. Tagantsev divided categories of "criminal law" and "criminal legislation" (many do not comprehend this even today) and determined relations between the rights and obligations of the guilty, the judge and the state. Specifying the function of the latter, he stressed that "the law is of the greatest importance for the state itself". By establishing which encroachments are recognized as so **significant** (the emphasis added) conditions of coexistence that the state protects them from nonfulfillment by threat of punishment" [8, p. 111].

N.S. Takagantsev suggested searching for the significant by interpretation (does anyone know other ways?), warning that the search for the meaning of what the legislator has said should begin from the opposite – ad absurdum, so that reasoning does not lead the law enforcement officer to "logical absurdity or physical impossibility of law enforcement" [8, p. 362]. It is good when the law is clear (this does not apply to Article 14 of the Criminal Code of the Russian Federation), because in such a situation it can be applied literally. It is quite another matter when the law will have to be applied taking into account the hidden thought of the legislator: "to give the norm either a restrictive, limited interpretation, or to interpret the law extensively, broadly" [8. p. 363].

Analyzing facets of "significance" and "insignificance", N.S. Tagantsev found extremely interesting examples of both types of interpretation by the Governing Senate. Extensive (hyper-significant) – resisting the execution of a court decision in a group (Article 270 of the Code of Criminal and Correctional Punishments) regardless of the participation degree. Nowadays, this resembles strict liability recommended by the Plenum of the Supreme Court of the Russian Federation No. 24 of July 9, 2013 "On judicial practice in cases of bribery and other corruption crimes" (No. 3 as amended of December 3, 2013, No. 59 of December 24, 2019): participants in the crime agreed to give and receive a bribe, regardless of the amount received, there are 2 corpus delicti.

Nowadays, a classic example of such an extended interpretation is the hyper-significance of only intellectual participation of the bribe giver in the organization of receiving a bribe – results of the consideration of the criminal case against Judge Kotov and Lawyer Kuvakina. In the actions of the latter, the courts of the first and second instances saw the completed corpus delicti, despite the fact that the latter, at the final stage of the crime commission, actually "worked for a law enforcement officer" who handed a "decoy" to the bribe recipient.

There is an example of restrictive interpretation of the law by the Senate: counterfeiters (Article 571 of the Code "Forgery of State Credit Papers") forged banknotes by drawing banknotes by hand and using "plain paper" (Paragraph 2) instead of special one (Paragraph 1), which significantly limited the possibility of their distribution. According to the legislator of XIX century, in such circumstances the court should be guided not by the letter of the law, but by reason (ex sententia legis) [8, pp. 363–364].

Such an extremely restrictive interpretation, albeit extremely rare, is still found today. So the prosecution did not consider the following actions as significant (Part 1 of Article 111 of the Criminal Code of the Russian Federation): the huntsman deliberately rammed a motorcycle with a car, on which the poacher took out illegally obtained trophies. The magistrate fully approved such a compromise approach to solving the problem, defining actions of the perpetrator as insignificant – causing harm to health when detaining a dangerous criminal (Part 1 of Article 114 of the Criminal Code of the Russian Federation) [10].

For a correct understanding of the restrictive interpretation, the "multimove game" undertaken by the Vsevolozhsky City Court of the Leningrad Oblast to release from punishment the director of the boarding house for the elderly N. is of particular interest. The latter was accused by the preliminary investigation authorities under paragraph "b" of Part 2 of Article 238 of the Criminal Code of the Russian Federation, for which he was convicted by this court on November 25, 2022. Despite the fact that N. was found guilty of providing services that led to the death of a woman, the court of first instance interpreted what he had done as insignificant, therefore saw grounds for the use of Part 6 of Article 15 of the Criminal Code of the Russian Federation, changed the category of crime from grave to less grave, applied Article 76 of the Criminal Code, Article 25 of Paragraph 2 of Part 5 of Article 302 of the Criminal Procedural Code of the Russian Federation and terminated the criminal case in connection with the reconciliation of N. with the victim (Resolution of Judge Ivanov of the Supreme Court of the Russian Federation on the transfer of a cassation submission for consideration at a court session of the court of cassation instance No. 33-UDP23-17-KZ of October 2, 2023 (Electronic Archive of the Supreme Court of the Russian Federation for 2024)).

Naturally, in all these situations, both the Senate and the Plenum of the Supreme Court of the Russian Federation, and law enforcement officers in specific cases were guided not by the "letter" of the law, but only by its "spirit", to be more precise, by considerations of expediency.

Naturally, N.S. Tagantsev always agreed with the position of the Senate that "any doubt should be interpreted in favor of the defendant" (in poenalilibus causis beniginius interpretandum; in dubiis – mistius) [8. p. 366]. As follows from the above, some doubts are not far from the far-fetched. It is vicissitudes of the institution of interpretation. It is no coincidence that Professor G.F. Shershenevich (1863–1912) warned "not to look for science in the interpretation, for this is art" [11, p. 724]. In other words, the conflict between categories of "legal certainty" and "legality" is inevitable due to, on the one hand, the brevity of legislative regulations and, on the other, fixation of the most general rules in law.

It is known that the 1864 Statute of Criminal Proceedings not only recognized the right of the courts to interpret the law (Article 12), but also forbade judges to evade this mandatory form of judicial activity, since the judge had no right to stop the decision of the case under the pretext of any ambiguity of the law (Article 13).

It is worth emphasizing that there has been no shared vision on the court's right to interpretation in Russia. N.S. Tagantsev said that, on the one hand, in view of the denial of precedent as a source of law, the fact of interpretation did not go beyond the scope of a specific criminal case, but, on the other hand, it had always been about the need to form a single legal space in the state, therefore private decisions on specific cases had a certain force of precedent. At the same time, a special role belongs to the higher courts in the formation of this unified legal space [8. pp. 369–361].

Nowadays, a special Russian judicial doctrine is widely discussed again. As in the time of N.S. Tagantsev, concerns are expressed that courts create law, and with the existence of a "rigid judicial system", "law is written by the highest authorities" [12, pp. 359–361].

Nikolai Tagantsev complained that not all decisions of the higher courts were officially published [8, p. 371]. The same can be said about current judicial practice. For example, it is recognized that not even all decisions of the Constitutional Court of the Russian Federation and the Plenum of the Supreme Court of the Russian Federation are published. The reasons for this approach to solving the problem may be different, but one of them is the lack of confidence in the legality and validity of court decisions.

With regard to the chosen topic we can state that facts of the application (and even more so, refusal to apply) of Part 2 of Article 14 of the Criminal Code of the Russian Federation by the courts are extremely rarely published and the practice analysis results are, as a rule, unavailable. Undoubtedly, in such circumstances, there is no need to talk about a single legal space for the application of Part 2 of Article 14 of the Criminal Code of the Russian Federation. And is this possible in a huge multinational and multi-religious country?

What should a law enforcement officer do in such situations? N.S. Tagantsev gives an answer to the question: we are talking about the authority of legal science. However, many Russians will immediately declare that we are not in England to refer to the luminaries of science. We do not have our own W. Blackstone (1723–1780) and D. Marshall (1755–1835). There are few references to the doctrine in criminal proceedings, however, in other types of proceed-

ings, such references are already welcome.

We will also consider the Statute on Punishments Imposed by Magistrates adopted at the time of the Great Judicial Reform of 1864. It was replete with phrases "depending on the circumstances" (Article 9), "admission of guilt", "compensation for damages" (Article 13). Property offenses (theft, fraud) committed in the family (Article 19); cases of forest theft (Article 21) had a special legal status.

Finally, according to Article 47 of the Criminal Code of 1903 (as amended in 1909), "an act directed at an object that does not exist or is obviously unsuitable for the commission of the kind of crime for which it is intended is not considered a crime".

2. Post-revolutionary period (1917–1958).

The slogan from the song "The Internationale": "We will destroy the whole world of violence to the ground, and then we will build our new world" applied to old "exploitative" law. Under such circumstances, the state apparatus had to create a "new Soviet, socialist" criminal law.

The first Soviet Criminal Codes. It is well-known that authors of both the first drafts of the Criminal Code of the RSFSR (1920[1], 1921[2]), the first Criminal Code of the RSFSR in 1922, and its modernized version of the Criminal Code of the RSFSR in 1926, were highly qualified specialists who perfectly knew both the pre-revolutionary legislation of Russia and the best examples of world criminal law.

A.A. Herzenzon (1902–1970), M.M. Isaev (1880–1950), A.A. Piontkovskii (1898–1973), and B.S. Utevskii (1887–1970), participants in author's teams, were well aware of the essence of a crime, its social danger, and significance of formal elements of criminal acts. However, all this knowledge from the past was critically perceived by society, which was divided into "exploiters" and "the exploited". Due to this circumstance, acts of the former were exaggerated, the significance of what the latter had done was downplayed.

For the "letter" of the law (its form) not to contradict its "spirit" (content), at the meeting of the Central Executive Committee specifically dedicated to the draft Criminal Code of the RSFSR of 1922, People's Commissar of Justice D.I. Kurskii (1874–1932) stated that "the law defined crime as Marxists understood it" and "justice was administered by workers and peasants" [13, p. 81]. So, the law is of class character, "Marxist", its "letter" is not a dogma at all, since no one has deprived law enforcement officers (judges from the people) of the right to appropriate forms of discretion.

It is no secret that judges of that period did not find it shameful to have a clearly expressed prejudice against certain categories of persons ("the former") considered "really socially dangerous" a priori [14, pp. 43–44].

Thus, the authors of the first Criminal Code of the RSFSR (1922), fixing in the law that "any dangerous act or inaction is recognized as a crime" (Article 6), did not forget to mention that "it is in action that the danger of a person is identified" (Article 7). In other words: an action is dangerous when it is committed by a dangerous person ("the former") or simply recognized as such – "a particularly dangerous recidivist".

Corresponding Member, Professor A.A. Piontkovskii in 1970 noted that the Criminal Code of the RSFSR of 1922 did not contain any judgments regarding the insignificance of an act, therefore, in 1924, the Central Executive Committee instructed the Presidium to work out the possibility of terminating a criminal case even before the trial in view of the insignificance of the offense on grounds of inexpediency.

Strangely enough, the Presidium of the All-Russian Central Executive Committee found a way out of this dilemma not in material, but in procedural law, supplementing the Criminal Procedural Code of the RSFSR with Article 4 "a". So, the prosecutor and the court became entitled "to refuse to initiate criminal prosecution, as well as to terminate the criminal case, when the act of the person being prosecuted, although it contains elements of a crime provided for by the Criminal Code, cannot be considered socially dangerous due to its insignificance, unimportance and the insignificance of its consequences, as well as when the initiation of criminal prosecution or further proceedings of the case seems impractical" (Resolution of February 9, 1925) [15, p. 30].

The 1926 Criminal Code of the RSFSR stipulated that "any action or inaction directed against the Soviet system or violating the order established by the Workers' and Peasants' government for a period of time transitional to the communist system is recognized as socially dangerous" (Article 6). A note to this article re-

[1] Prepared by the Commission of the General Advisory Department of the People's Commissariat of Justice, published in the Materials of the People's Commissariat in 1920, Issue VII.

[2] Prepared on November 4, 1921 by the Section of Judicial Law and Criminology of the Institute of Soviet Law.

corded that “an action is not a crime when, although formally having elements of any article of the Special Part of this Code, it is devoid of the character of a socially dangerous one but due to its obvious insignificance and absence of harmful consequences”.

Half a century later, scientists stated that this rule had hardly ever been applied in prosecutorial and judicial practice [16. p. 32].

3. Developed socialism period (1958–1991).

Moscow course of Soviet criminal law. According to Professor A.A. Piontkovskii, insignificance of the committed act should be such that criminal liability and punishment in this particular case would be superfluous in terms of implementing general tasks of the legislation of the USSR (Part 2 of Article 7 of the Fundamentals of Criminal Legislation of the USSR and Union Republics).

It is absolutely unacceptable to leave the offender completely unpunished. According to Andrei A. Piontkovskii, recommendations contained in the Resolution of the Plenum of the Supreme Court of the USSR of June 19, 1959 “On the Practice of Applying Criminal Penalties by Courts” can be a way out of the situation. So, “courts should transfer to the public consideration the cases of offenses that do not pose a significant public danger, terminating such criminal proceedings in accordance with Part 2 of Article 7 of the Fundamentals of Criminal Legislation of the USSR and Union Republics”.

The Plenum of the Supreme Court of the USSR returned to this issue on December 19, 1958 in the Resolution “On the Activities of Judicial Authorities in Connection with the Increasing Role of the Public in the Fight against Crimes”. The Resolution of the Plenum of the Supreme Court of the USSR dated March 26, 1960, contains an assessment of the above recommendations: “courts continue to institute criminal cases against persons who have committed acts that do not pose a great public danger, it is necessary to wider apply the practice of transferring such cases to comrades’ courts at the place of work or residence of the guilty one, instead of transferring them to the public, taking into account the opinion of the victim”.

The 1960 Criminal Code of the RSFSR had a special norm – Article 51 “Exemption from Criminal Liability with the Transfer of Cases to a Comrades’ Court”. The Plenum of the Supreme Court of the USSR considered the issue of transferring cases of minor crimes to comrades’ courts on April 9, 1965 in the Resolution “On the Practice of Transferring Cases and Materials by Courts to the Consideration of Comrades’ Courts”. From that moment on, the society was not engaged in deciding the fate of minor offenders, since there was no network of successfully functioning comrades’ courts in the country, there was no one to bail offenders. It should be recognized that “comradely justice” in 1958–1964 was just an element of good wishes and propaganda.

Let us give an example from our own personal experience. Since the beginning of the 1980s, attempts to apply an analogue to Article 51 of the Criminal Code of the RSFSR in Moldova were countered by counter-questions from the prosecutor, “Show me a successfully functioning comrades’ court!”. And the prosecutors were right. Employees of enterprises and local committees lived according to the generally recognized principle: “Judge not, you lest judge”.

However, A.A. Piontkovskii recognized that the termination of a criminal case for insignificance (Part 2 of Article 7 of the Criminal Code of the RSFSR) and the termination of the case with its transfer to a comrades’ court (Article 51 of the Criminal Code of the RSFSR) are far from the same thing [15. pp. 34–41].

It is unapproachable, but immoral, which may be why it is criminal.

In 1970, A.A. Piontkovskii recognized “the line between criminal and non-criminal, but contrary to communist morality, behavior is historically changeable. Behavior that at a certain time is condemned only by communist morality, under certain conditions can be recognized a crime” [15. p. 28].

The researcher, referring to the existence of criminal liability for truancy in 1940–1956 according to the Decree of the Presidium of the Supreme Soviet of the USSR of June 26, 1940 (convicts in places of deprivation of liberty were called “ukaznik” and “ukaznitsa”) noted a negative assessment of absenteeism only according to communist morality rules” [15, p. 29].

It is not clear for what reasons the respected professor forgot about the Labor Code of the RSFSR, according to which an absentee could easily be fired.

Truancy – sabotage: twice to be shot.

To correctly correlate categories “spirit of the law” and “essence of the moment”, the case of locksmith Chvanin is of particular interest, who, according to the verdict of the Molotov Regional Court of August 10, 1942, was sentenced to capital punishment (execution)

under Articles 58–14 of the Criminal Code of the RSFSR for "systematic counterrevolutionary sabotage: since March 1942, he had been absent from work for 34 days; instead of a sick leave, he wrote out fictitious certificates to himself, exempted him from work, forged the seal of the outpatient clinic and the signature of the doctor. He supplied other mine workers with the same fictitious certificates that exempted them from work".

No less remarkable are the disputes that have unfolded over another harsh court decision. By the ruling of the Judicial Board for Criminal Cases of the Supreme Court of the RSFSR of September 4, 1942, Chvanin's actions were reclassified to Part 1 of Article 72 of the Criminal Code of the RSFSR, according to which 3 years of imprisonment were appointed. By the ruling of the Judicial Board for Criminal Cases of the Supreme Court of the USSR of October 28, 1942, the cassation ruling was canceled, the case was sent for a new cassation hearing. By the ruling of the Judicial Board for Criminal Cases of the Supreme Court of the RSFSR of October 31, 1942, the verdict was left unchanged. By the decree of the Presidium of the Supreme Soviet of the USSR of November 21, 1942, the death penalty was replaced by 10-year imprisonment. Finally, by the decree of the Presidium of the Supreme Court of the Russian Federation of July 21, 2010, Chvanin's actions were qualified under Part 1 of Article 72 of the Criminal Code of the RSFSR (1926), according to which he was sentenced to 2 years in prison.

It seems that attentive readers have already noticed that the convict was not accused of forging officially recognized disability certificates (documents representing a certain right), but was convicted only for writing out certificates, which do not entail any legal consequences.

Leningrad Course of Soviet criminal law. Scientists from the Leningrad University, referring to the Marxism-Leninism classics, noted that "the society is not based on the law. These are fantasies of lawyers. On the contrary, the law should be based on society" [16, p. 259]. They concluded, "the public danger of a crime is not limited only to pointing out those objects that it encroaches on. Public danger is also determined by other objective and subjective elements of an act" [17. pp. 158–160].

It seems that the authors of this course in their narrative referred to a very successful example of the insignificance of an act. The Judicial Board for Criminal Cases of the Supreme Court of the RSFSR regarded as insignificant the action of G., who tried to steal a watermelon through a broken hatch. Applying Part 2 of Article 7 of the Criminal Code of the RSFSR, the High Court cited the following motive: "G. did not have a container for carrying watermelons, therefore, he could not cause significant damage".

Here, an astute reader may wonder how to assess the significance of the act, if G. had a container with him (a bag, a wheelbarrow).

"Small size"?

On January 16, 1965, the Presidium of the Supreme Soviet of the RSFSR tried to find a way out of this situation by supplementing the 1960 Criminal Code of the RSFSR with Article 93.2 "Application of a Fine for Theft of State or Public Property". A fine could be imposed for theft of state or public property on persons whose objective side of the act corresponded to Article 89 (theft), Article 92 (embezzlement) or Article 93 (fraud), provided that the amount of the stolen was small, the act was committed for the first time, and the application of the above articles of the Criminal Code of the RSFSR is not necessary.

We are primarily interested in the "small size" category. The authors of the Commentary to the Criminal Code of the RSFSR, bearing in mind that theft of state (public) property in the amount of up to 50 rubles is petty theft, punishable outside the framework of criminal law, determined theft of property in the amount of 100 rubles punishable according to the rules of Article 93.2 of the Criminal Code of the RSFSR. There were some reservations: 1) application of the analyzed norm was a right, not an obligation of the court; 2) theft in the amount of less than 100 rubles could be closely related to the amount of the stolen [18, pp. 238–240]. We can give an example from judicial practice. The group stole six bags of wheat with a total weight of 300 kg., however, the total value of the stolen turned out to be less than 100 rubles. The court refused to recognize this theft as an act provided for in Article 93.2 of the Criminal Code of the RSFSR.

Article 93.2 of the Criminal Code of the RSFSR turned out to be a norm that was not viable (in fact, stillborn), therefore, on December 3, 1982, it was excluded from the Criminal Code.

Practice of applying the Criminal Code in 1964–1991

According to K. Marx, the criminal law was "*Great Acting*" [19, pp. 139–180]. If society does not have clarity on general issues, then why should it suddenly have clarity on private issues, for example, such as criminal policy?

And according to Ch. Darwin and according to K. Marx, any policy is predetermined by Mother Nature. Is it really "forest theft" (a crime) or just "violation of forest rules" (an offense)?

"*Smugglers*" [20]. Having moved from the XIX century to the developed socialism period (1964–1985), we will consider categories of "criminals" and "*smugglers*"? Let us note that mass behavior cannot be a crime. It is the ABC of modern criminology, because the number of offenders will easily exceed the number of law enforcement officers. It is no coincidence that at the end of the Soviet period, workers who pilfered the Rubin TV or even the Zhiguli car in parts were shamefully called not "thieves" (the term "petty theft" was never withdrawn from the Soviet, as well as the post-Soviet legal lexicon) by publicists, but only affectionately "smugglers".

"This problem has become so organically integrated into the psyche of a Soviet person that it is considered indecent to condemn "smugglers" in a normal conversation (not for the record and not for the public). Any attempt to strengthen the public reaction to such offenses and give it at least a somewhat negative connotation has evoked memories of Stalin's repressions" [21].

So, the problem of the ratio of an offense, its severity and prevalence, identified by K. Marx in one of his early works, is relevant today. Let us say more, even in a nightmare, the classic could not have imagined that his direct, official follower I.V. Stalin would be the initiator of a series of normative legal acts, according to which minors could even be executed for petty theft.

We are talking about resolutions of the Central Executive Committee and the Council of People's Commissars of the USSR of April 7, 1935 "On Measures to Combat Juvenile Delinquency", which introduced criminal liability for children aged 12 and over and of August 7, 1935 "On the Protection of Property of State Enterprises, Collective Farms and Cooperatives and the Strengthening of Public (Socialist) Property" (known as Decree "7-8", "Law on three spikelets"), the cumulative effect of which is that children can be shot even for petty theft. For example, on December 9, 1937, Misha Shamonin was shot after stealing several loaves of bread. After studying the practice of applying these acts, the Prosecutor General of the Russian Federation A.Ya. Vyshinskii reported to I.V. Stalin, "115 thousand criminal cases were checked, in 91 thousand cases the application of criminal law norms was regarded as sabotage, 37,425 people who were in custody were released from punishment".

Well, was there a parliamentary debate on this issue. No, all the debates came down to approval of circulars by members of the Political Bureau of the Central Committee of the All-Union Communist Party. As for results of the investigation conducted by A.Ya. Vyshinskii, I.V. Stalin made a resolution: "I am for! (do not publish)".

Punishment goal: "fog" or specifics.

Marx's contemporaries wrote about this in the XIX century [22]. "The prison issue is one of the crucial at the moment" [23]. Punishment is evil, the suffering that the state inflicts on a criminal. The goal is an absolute idea of retribution (Kant), denial of the denial of crime (Hegel), restoration of harmony (Herbart), and protection of law and order by the state. So, the goals of K. Marx's contemporaries were clear. How to achieve them? That is the question! In the XIX century, it was believed that goals could be achieved by intimidation, correction, as well as by simply physically removing a criminal from society (forever – the death penalty, for a time – imprisonment). Even then, the death penalty was regarded as an obviously inhumane excess, and imprisonment was taken as an ideal. Thinkers took care of the problem of how to combine brute physical force (forcible incarceration) with the prospects of re-education and correction of the prisoner.

Since Soviet times, we have been correcting and re-educating the criminal, while we are confident that the criminal law allows the court to impose punishment very specifically and accurately so that the criminal is corrected and re-educated. Based on these artificial theses, deduced exclusively on the tip of a pen, theorists have defended more than one hundred dissertations.

For example, H. Frister honestly admitted that the purpose of punishment was not completely clear to him, criminal punishment could only be approximate, that is why it needed correction. We will find similar thoughts in the works of H.J. Schneider and G. Werle. And it is really so.

At the international scientific and practical interdepartmental conference "The Penal System at the Present Stage: Science-Practice Interaction" (Samara, Samara Law Institute of the Federal Penitentiary Service, June 16–17, 2016), Director of the National School of Penitentiary Administration Sophia Blaise, answering questions from Russian colleagues about

the purposes of detention of convicts in places of deprivation of liberty, honestly confessed that employees of the penitentiary system of her country did not face the issue of correction and re-education of criminals. The employees of this system see their task only in ensuring physical detention of prisoners.

"Saw, Shura, saw".

The development of communist ideas of countering crime rested on the honest concept of the late academician V.N. Kudryavtsev (1923–2007), "many useful and probably effective measures to combat crime proposed by law enforcement agencies or the public cannot be accepted and implemented, because there are more important national interests" [24, p. 50].

On February 17, 2016, the Pope, speaking in Mexico, stated, "We have lost several decades in the hope that we will be able to hide behind prison walls". As we can see, modern society "no longer raves about the morality of punishment", it is "an ostrich hiding its head in the sand".

What about regulations of petty theft in modern Russia? The legislator has been continuously changing the wording of Article 7.27 of the Administrative Code of the Russian Federation "Petty Theft" and Article 158 of the Criminal Code "Theft" for 15 years. K. Marx would have called this mouse fuss acting.

4. Post-Soviet criminal law

Undoubtedly, the authors of the Criminal Code of the Russian Federation in 1996 knew the evolution history of the category of "crime" in criminal law and its parameters such as "significant" and "insignificant". They also understood perfectly well that it was almost impossible to say anything new about this. Due to this circumstance, the definition of the crime was practically unchanged from Article 7 of the Criminal Code of the RSFSR in 1960. It migrated to Article 14 of the Criminal Code of the Russian Federation. The authors of the Encyclopedia of Criminal Law, including N.F. Kuznetsova (1927–2010), limited themselves to a non-binding phrase, indicating only "the ambiguity of the approach of the legislator and the doctrine to the content of public danger" [25, pp. 64–65]. That is how it is: the legislator expects foresight from science, and science expects wisdom from the legislator. But it is only necessary to recognize the legal realism created by judges. But the bad luck is that society does not trust them, relying on the wisdom of the legislator.

Other points of view.

H. Frister, a lawyer from Germany, arguing about the expediency of criminal prosecution, based on the Criminal Code (Strafgesetzbuch StGB), in which illegal acts are ranked into crimes and misdemeanors, notes that nothing prevents the termination of criminal cases of misconduct for insignificance [26, p. 125].

It was precisely this perspective of the case that N.F. Kuznetsova discussed, referring to Part 4 of Article 11 of the Criminal Code of the Republic of Belarus [25, pp. 91–95], the authors of which were able to remove the intersectoral barrier, the presence of which is so revered by some Russian lawyers.

The German legislator is very categorical when the perpetrator attempts to destroy an unusable object: "theft of things of insignificant value" is prosecuted only if there are "statements from victims" and "public interest" (Paragraph 248 "a" of the Criminal Code).

Here are some scientific and practical conclusions.

1. We support ideas of Professor N.F. Kuznetsova that there has never been unity in the interpretation of the concepts of "significant" and "insignificant" in the theory of Russian criminal law. It should be added that there is no complete clarity on this issue in the criminal law of most countries.

2. It seems that a comprehensive conclusion regarding the essence of the crime is the thought of N.S. Tagantsev that such an act is, in any case, a "life event"; necessarily a form of "manifestation of personality"; in general, "a socially significant phenomenon"; and "a subject of anthropology" in the broadest sense. Naturally, a crime generates "legal relations".

3. Since algorithms for the application of Part 2 of Article 14 of the Criminal Code of the Russian Federation are still being worked out, as well as similar criminal law regulations (for example, Part 6 of Article 15 of the Criminal Code of the Russian Federation), in which a dispute inevitably arises about the significance of what has been done, society has to rely on the level of interpretation art (G.F. Shershenevich), which our judges possess.

4. It is not surprising that under such circumstances, a greater number of lawyers suggest that the problem of the insignificance of an act should be discussed by the Plenum of the Supreme Court of the Russian Federation.

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INFORMATION ABOUT THE AUTHOR

NIKITA A. KOLOKOLOV – Doctor of Sciences (Law), Professor, Head of the Department of Judicial and Prosecutorial Investigative Activities of A.S. Griboyedov Moscow University, professor at the Department of Theory and History of Government and Law of the Institute of Social Studies and Humanities of Moscow Pedagogical State University, Judge of the Supreme Court of the Russian Federation in Honorable Retirement, Chairman of the editorial boards of the journals "Justice of the Peace" and "Criminal Judicial Proceeding", Moscow, Russia, nikita_kolokolov@mail.ru

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Fraud: Correspondence of a Large and Grand Size to the Degree of Public Danger Originally Laid Down by the Legislator

EKATERINA V. AVDEEVA
Russian Presidential Academy of National Economy and Public Administration, Moscow, Russia
All-Russian Public Organization "Business Russia", Moscow, Russia
pravo@deloros.ru

Abstract

Introduction: the article analyzes significance of the degree of public danger in the context of economic corpus delicti and studies compliance of public danger to thresholds of large and grand-scale fraud provided for by Article 159 of the Criminal Code of the Russian Federation originally laid down by the legislator. *Purpose*: to study the size of large and grand damage for corpus delicti most often incriminated to entrepreneurs and analyze legislation in other post-Soviet countries to determine a large and grand size, as well as its use in conditional values. *Methods*: general scientific methods of cognition (analysis, synthesis, induction and deduction), special methods of legal science (comparative legal and normative-logical), individual private methods of social sciences. *Results*: domestic criminal legislation needs to be reconsidered and thresholds of large and grand-scale fraud as aggravating circumstances of many economic crimes should be brought into line with economic changes, including in Article 159 of the Criminal Code of the Russian Federation "Fraud". This is confirmed by economic changes, as well as experience of other countries. *Conclusion*: the analysis shows the necessity of introducing conditional values that will allow us to respond in a timely manner to changes in the economy without a point-by-point revision of criminal legislation, which will more fully meet the criterion of fairness.

Keywords: fraud, large and grand size, experience of post-Soviet countries, criminalization and decriminalization of acts in the field of economy, conditional values for determining a large and grand size.

5.1.4. Criminal law sciences.

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Introduction

Today, the criminal policy on business structures is focused on liberalization, while the criminal legal policy – on decriminalization of certain acts, an increase in threshold values of the amounts defining the act as a crime, as well as an increase in threshold values of large and grand sizes, which serve as an aggravating circumstance for many corpus delicti. The main factor in criminalization or decriminalization

of acts is the public danger, which essentially determines the need to amend criminal legislation. At the same time, some scientists note the change in criminal legislation increasingly due to other factors, such as politics, economics, etc., which inherently leads to the heterogeneity of amendments to criminal legislation, which, with such a chaotic approach, actually make adjustments to the assessment of public danger without proper analysis.

Research

To analyze the impact of existing trends, let us turn to what constitutes a criterion of public danger for criminalization and decriminalization of acts and what is the role of thresholds of a large and grand size, as well as the prolonged absence of their adjustment, despite economic changes. Having analyzed scientists' view on this issue, we can say that the criterion of public danger is the main factor in criminalizing or decriminalizing certain acts, that is, the introduction or cancellation of a criminal law ban on committing certain actions. At the same time, public danger still belongs to hotly debated criminal law categories with a range of opinions from unconditional approval and acceptance to categorical disapproval [1, p. 23]. According to P.S. Tobolkin, this can be explained by the fact that public danger, being a fundamental category that provides general coverage of all key problems of the criminal law theory, ensuring the conceptual unity of criminal law knowledge, cannot be disclosed with the help of any other criminal law concepts [2, p. 48].

The very change in social danger is caused by socio-economic processes taking place in society [3, p. 248]. Thus, the legislator, when classifying certain acts as socially dangerous, is not determined by some precise concept, elements, and criteria. L.M. Prozumetov points out that public danger is a very dynamic concept in its content, which has characteristic features in relation to a specific historical period of society's development, often the degree of public danger is established on the ground of common sense experience [4].

Speaking about economic crimes, it is the concepts of "large size", "grand size" and "significant damage" that determine public danger of an act and help distinguish a criminally punishable act from an administrative offense, as well as determine the severity of a crime, often acting as aggravating circumstances in economic corpus delicti. In this article, we will analyze the size of large and grand damage, namely parts 1–4 of Article 159 of the Criminal Code of the Russian Federation. For the considered crimes, a large and grand size is an aggravating circumstance that defines the category of the committed act as grave. Thus, this aggravating circumstance significantly affects the totality of criminal legal consequences for a person accused under Article 159 of the Criminal Code of the Russian Federation. At the same time, categorization of crimes is of great importance, as well as its attribution to one or another category. T.A. Lesnievski-Kostareva in her works points out that categorization of crimes in Article 15 of the Criminal Code should be considered not as a means of differentiating criminal liability, but as the basis of differentiation [5, p. 38]. Attribution of an act to a particular category determines the consequences within the framework of institutions provided for by the General Part of the Criminal Code of the Russian Federation, such as the stage of the crime, recidivism, types and purpose of punishment, exemption from criminal liability and punishment, criminal record, etc. At the same time, for each category of crimes, along with differentiation, the necessary degree of unification is provided, therefore, for example, for persons who have committed any crimes of small or medium gravity (regardless of their generic, specific and direct object and form of guilt) in the presence of additional conditions specified in Articles 75, 76, 76.2 of the Criminal Code, there are types of exemption from criminal liability [6, p. 45].

The legislator expressly provides for the possibility of termination of criminal prosecution or exemption from criminal punishment under a number of articles named in Articles 28.1 of the Criminal Procedural Code of the Russian Federation and Article 76.1 of the Criminal Code of the Russian Federation. Parts 1–4 of Article 159 of the Criminal Code of the Russian Federation do not relate to entrepreneurial crimes, of course, but classifying a crime as medium-gravity allows us to count on the possibility of exemption from criminal punishment if a number of conditions are met by the accused. In this regard, the amount, establishing a large size, as a factor determining the possibility of exemption from criminal punishment or lack

thereof is of paramount importance. Undoubtedly, it is necessary to take into account limitation periods, which vary significantly depending on the category of crime, the difference in the limitation period for criminal prosecution for a serious crime and a medium-gravity crime is 4 years (6 years for medium-gravity crimes and 10 years for serious crimes).

Returning to the amount of large and grand damage in relation to parts 1–4 of Article 159 of the Criminal Code of the Russian Federation, it is necessary to clarify that before December 8, 2003, when the Federal Law "On Amendments and Additions to the Criminal Code of the Russian Federation" was adopted, the threshold for major damage was determined in the amount of 500 minimum wage. The explanatory note does not say anything about the expediency of determining thresholds not with regard to the minimum wage, but in absolute values. It only substantiates the change in calculation of fines. It suggests using absolute values to determine the fine amount instead of referring to the minimum wage, though the argument about the occurrence of confusion is not supported by at least some statistical data.

The above-mentioned federal law in 2003 defined fixed amounts of large and grand damage for property crimes, including introducing such an additional aggravating circumstance as grand damage. So, for crimes against property, most often incriminated to entrepreneurs under Article 159 of the Criminal Code of the Russian Federation, large damage in the amount of 250 thousand rubles and grand damage in the amount of 1 million rubles was fixed. However, the absence of the need to calculate the amount to determine the presence or absence of an aggravating circumstance in connection with the amount of damage due to the introduction of fixed amounts of large and grand damage led to increased criminalization of those acts for which amounts of large and grand damage had not been reviewed for more than 20 years. At the same time, the amounts of "significant damage", "large size" and "grand size" fixed in parts 5–7 of Article 159 of the Criminal Code of the Russian Federation in 2016 were increased by the Federal Law of April 6, 2024 No. 79-FZ "On Amendments to the Criminal Code of the Russian Federation and the Criminal Procedural Code of the Russian Federation" to liberalize criminal legislation against entrepreneurs. Thought the qualification of fraud incriminated to entrepreneurs according to special aggravating circumstances provided for in Part 5–7 of Article 159 of the Criminal Code of the Russian Federation is extremely rare, which is confirmed by the statistics of sentences (slightly more than 100 for a year) [7]. As for parts 3 and 4 of Article 159 of the Criminal Code of the Russian Federation, there are 7 thousand sentences a year, of which it is not possible to single out the number of sentences against entrepreneurs due to the specifics of statistical accounting, which does not necessarily imply affixing of appropriate codes and, as a result, non-recognition of the commission of an act in the field of entrepreneurial activity. The latter thesis is confirmed by judicial practice, which ignores the application of measures to protect the rights of business entities during the investigation of criminal cases, relying on the fact that "within the meaning of current legislation, entrepreneurial activity cannot be carried out for the purpose of illegal circulation of other people's property by deception in their favor, that is, for selfish purposes" [8, p. 70].

A large size under Article 159 of the Criminal Code of the Russian Federation, in accordance with Article 15 of the Criminal Code of the Russian Federation, classifies the act as serious, since the maximum term of imprisonment for this corpus delicti is 6 years; grand-scale fraud is a serious crime. As for absolute values of a large and grand size, the legislator has not taken into account economic aspects. The value of 1 ruble decreases in a year. And even if one does not rely on the cost of money with regard to the time factor [9, pp. 213–214] or on the change in the cost with regard to the discount rate, then one can be guided by elementary logic and available statistical data.

It is necessary to address the real value of money, taking into account economic changes through the prism of the minimum wage. So, in 2003, the minimum wage was 600 rubles. Since January 1, 2024, the minimum wage is 19,242 rubles, which is 32.07 times more. That is, if no changes were made to the criminal law in 2003, the amount of major damage would amount to 9,621,000 rubles today. However, this would rather be excessive decriminalization if the definition of large and grand damage according

to the minimum wage were maintained, since, according to official statistics, the cumulative percentage of inflation for the period since December 2003 until March 2024 amounted to 397.68%. So, because of inflation, the defined amount of large damage is now devalued and the real value is only 47,381.74 rubles, which means actual criminalization of embezzlement that, based on the real amount, is classified as moderate or minor according to the legislator's plan. When recalculated with regard to inflation, amounts of a large and grand size should correspond to the fair amount of a large and grand size of 1,319,073.55 and 5,276,294.2 rubles, respectively.

It is obvious that a timely increase in the thresholds of large and grand damage as defining elements of special aggravating circumstances, does not pose a threat to public or economic security. This is due to ensuring compliance with the degree of public danger of certain acts at the level that was originally laid down by the legislator. Moreover, given the shortage of personnel in the police [10], it seems advisable to ensure a focus of attention, taking into account the limitation period and the degree of public danger that was originally laid down by the legislator.

For a more complete picture, it is still necessary to analyze thresholds of a large and grand size as an aggravating circumstance used in criminal legislation for an article providing for liability for fraud in the post-Soviet countries – CIS members.

Table

Country	Large fraud	Grand fraud	Assessment methodology	Sum in rubles, large size	Sum in rubles, grand size	Articles of the Criminal Code: fraud/ definition of a large and grand size	Minimum wage in rubles recalculation o fa large and grand size by the number of minimum wage indicators
1	*2*	*3*	*4*	*5*	*6*	*7*	*8*
Russian Federation	Value of the property or the amount of damage over 250,000 rubles	Value of theproperty or the amount of damage over 1,000,000 rubles	National currency	250 000	1 000 000	Art. 159/ Note to Art. 158	19 242 [11] 13 and 51 respectively
Republic of Kazakhstan [12]	Value of the property or the amount of damage 1,000 times higher than the monthly calculation index	Value of the property 4,000 times higher the monthly calculation rate	MCR – monthly calculation rate (3,692 tenge) [13]	771 085.276 (exchange rate 0.208853)	3 084 341.1	Art. 190/ Paragraph 3 of Art. 3	17 752.5 (85 000 tenge) [13] 43.4 and 173.7 respectively.
Republic of Uzbekistan [14]	Value of the property exceeding 300 basic calculation values	Value of the property exceeding 500 basic values	Base value (3 4 0 , 0 0 0 soums) [15]	750 618 (exchange rate 0,007359)	1 251 030	Art. 168 / Section 8	7 726. 95 (1 050 000 soums) [15] 97.14 and 161.9 respectively
Republic of Tajikistan [16]	Value of the property 1,000 times higher than the calculation rate	Value of the property 2,000 times higher than the calculation rate	Calculation rate (72 somoni) [17]	615 600 (exchange rate 8.55)	1 231 200	Art. 247 / Art. 244	6 840 (800 somoni) [18] 90 and 180 respectively
Republic of Turkmenistan [19]	Value of the property 250 times higher than the size of the base value	Value of the property 500 times higher than the size of the base value	Base value (100 manats) [20]	667 500 (exchange rate 26.7)	1 335 000	Art. 249 / Art. 247	34 176 (1 280 manats) [21] 33 597 19.53 and 39.06 respectively

1	2	3	4	5	6	7	8
Kyrgyz Republic [22]	Value of the property 10,000 times higher than the calculation rate	Value of the property 25,000 times higher than the calculation rate	Calculation rate (100 soms) [23]	1 050 000 (exchange rate 1.05)	2 625 000	Art. 209/ paragraphs 7,8 of Appendix 1 to the Criminal Code	The amount of the minimum estimated income is applied, it varies for regions
Belarus [24]	Value of the property 250 times higher than the base value	Value of the property 1,000 times higher than the base value	Base value (40 bel. rubles) [25]	286 500 (exchange rate 28.65)	1 146 000	Art. 209/ Paragraph 3 pf the Note to Chapter 24	17 934,9 (626 bel. rubles) [26] 16 and 64 respectively
Republic of Moldova [27]	Value of the property exceeding 40 projected average monthly salaries (it is not explicitly stated that the size is large, the size is indicated in the disposition, but it follows that we are talking about large fraud)	Value of the property exceeding 100 projected average monthly salaries (it is not explicitly stated that the size is large, the size is indicated in the disposition, but it follows that we are talking about grand fraud)	Projected average monthly salary (13 700 lei) [28]	2 844 120 (exchange rate 5.19)	7 110 300	Art. 190	25 950 (5 000 lei) [29] 117 and 292 respectively
Republic of Armenia [30]	Value of the property 500 times higher than the minimum wage	Value of property exceeding 3,000 times the minimum wage	Minimum wage (75 000 drams) [31]	8 925 000 (exchange rate 0.238)	53 550 000	Art. 178 / Art. 175	17 850 (75 000 drams) [32] 500 and 3 000 respectively
Republic of Azerbaijan [33]	Value of the property exceeding 50 000 manats	Value of property exceeding 500 000 manats	National currency	2 748 500 (exchange rate 54.97)	27 485 000	Art. 178 / Art. 177	18 964.6 (345 manats) [34] 145 and 1 449.3 respectively

Note: the exchange rate was calculated as of April 20, 2024 on the basis of data provided by the website: https://finance.rambler.ru/calculators/converter/1-KZT-RUB /?ysclid=lv9s9bpt2r150295847.

The table above provides a structured view of the thresholds. It can be concluded that the amount of a large and grand size as an aggravating circumstance of the act provided for by the article of the Criminal Code "Fraud" is the lowest in the Russian Federation. Moreover, when assessing the ratio of a large size to the minimum wage, we also have the lowest indicator among the analyzed countries. The minimum wage in Russia is higher than in six of the countries shown in the table. At the same time, only two countries, the Russian Federation and the Republic of Azerbaijan, use absolute values, setting amounts that determine a large and grand size in the national currency, and not in certain conventional values. Thus, other countries use conditional values, the change of which leads to a uniform increase in all thresholds for a large and grand size, significant damage with regard to inflation, for all corpus delicti where such an aggravating circumstance is present. The minimum wage, which was used in Russian legislation until 2003, the projected average monthly salary, the base value, the calculated indicator and the monthly calculation index are used as such conditional values in criminal codes of the post-Soviet countries. It should be assumed that the criterion "monthly calculation index" can hardly be applied in domestic legislation, since this is a specific economic indicator, the use of which can lead to an excessive reduction in public danger, since it can go up faster, determining the growth of the welfare of the population.

Having analyzed variants of conditional values in criminal law, it should be noted that the experience of the Republics of Belarus and Turkmenistan, where the concept of a base value is introduced, as well as the Kyrgyz Republic, in which the calculation indicator is used, deserves attention. It seems that the introduction of one of these conditional indicators is the most suitable option for Russian legislation, since the minimum wage does not always rise in accordance with the inflation rate; it can be stated that the minimum wage increases are still somewhat faster, therefore it would be more logical to introduce some basic value, the change of which will lead evenly to an increase in thresholds of significant, large and grand damage for all crimes in the field of economics. Such a measure will protect against the selectivity of the legislator in changing thresholds for some corpus delicti, leaving the amounts determining a large and grand scale for others.

It should also be noted that excessive criminalization due to the lack of timely changes in a large and grand size has a particularly negative effect on ensuring protection of the rights of business entities [35], since most illegal acts in the business environment are qualified precisely under parts 3, 4 of Article 159 of the Criminal Code of the Russian Federation. In addition, it should be taken into account that fraud borders on a civil dispute [36].

Conclusion

Thus, it is obvious that Russian criminal legislation needs to be revised and brought into line with economic changes in the thresholds of a large and grand size as aggravating circumstances of many crimes in the field of economics, including under Article 159 of the Criminal Code of the Russian Federation “Fraud”. This is confirmed by the changes occurred in the economy and the experience of other countries. It is also necessary to consider the possibility of introducing conditional values that will allow a timely response to changes in the economy without a point-by-point revision of criminal legislation, which will more fully meet the criterion of fairness. At the same time, this will remove an excessive burden on law enforcement bodies, determining the focus of the law enforcement officer’s attention on those economic crimes that correspond to the public danger that was originally laid down by the legislator, preventing excessive criminalization of acts. Taking into account the fact that large and grand sizes are only aggravating circumstances and do not imply complete decriminalization of acts that do not correspond to these thresholds, but only determine their low social danger and classify them as crimes of minor or moderate severity, it can be assumed that it does not pose a threat to economic security.

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INFORMATION ABOUT THE AUTHOR

EKATERINA V. AVDEEVA – Candidate of Sciences (Law), associate professor at the Department of Legal Support of Market Economics at the Law School of the Institute of Public Administration and Management of the Russian Presidential Academy of National Economy and Public Administration, Moscow, Russia, Head of the Expert Center for Criminal Law Policy and Enforcement of Judicial Acts of the All-Russian Public Organization "Business Russia", Moscow, Russia, pravo@deloros.ru

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Improving Mechanisms for Criminal Law Protection of Public Relations Arising in the Process of Digital Society Evolution

PETR N. KOBETS
All-Russian Research Institute of the Ministry of Interior of Russia, Moscow, Russia, pkobets37@rambler.ru, https://orcid.org/0000-0001-6527-3788

Abstract.

Introduction: legal relations arising in modern digital society in the field of application of artificial intelligence technologies, first of all, require proportional development of the criminal legal framework, since newly emerging innovative products can be potentially dangerous to humans. *Purpose:* to show that due to insufficient knowledge and the complexity of accurate forecast of the genesis of legal relations that are associated with the use of new technologies, common criminal law norms can no longer sufficiently provide full protection of the well-being of individuals and the state. *Methods:* historical, logical, comparative analysis, specific sociological techniques. *Results:* it is proved that despite a number of scientific and theoretical developments in the field of artificial intelligence liability, the issue of its legal regulation remains extremely relevant, has different points of view and needs to be resolved quickly. Meanwhile, solution of the problem associated with criminal liability of artificial intelligence using new technologies should pursue the goal of protecting interests of the society that will soon have to daily face legal problems arising in the process of improving new technologies. Therefore, today modern developments of the latest criminal law protective mechanisms that could very quickly ensure control of public dangers in the area under consideration are so relevant. *Conclusions:* in the near future, standard practice will not be able to ensure full protection of the welfare of society, since criminal law mechanisms will not be able to adequately respond to emerging technical innovations and, accordingly, will not be able to format new digital criminally punishable actions in their own way. Thus, it is reasonable to look for new solutions for the criminal law protection of public relations of the digital society. At the same time, it is important that designs of new protective mechanisms timely assess the possible risks associated with technical innovations and technological breakthroughs.

Keywords: digital society; artificial intelligence; legal regulation; criminal liability measures; legislative framework; compensation for harm; law enforcement; crime prevention; compliance with the law.

5.1.4. Criminal law sciences.

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Introduction

One of the key directions for boosting scientific and technological progress in the XXI century is the one that is inextricably linked with robotic systems based on artificial intelligence. Development and subsequent active promotion of robotic systems in most spheres of life necessarily leads to the formulation of new problematic issues, both for legal science in general and criminal law in particular.

At the moment, in most world countries, problematic issues related to various types of liability measures in case of harm caused by these technologies remain key in the field of legislative regulation of public relations related to artificial intelligence technologies [1, p. 85]. Domestic legal scholars heatedly discuss ways to solve a number of legal problems related to artificial intelligence liability. It is quite obvious that the issues related to the need to bring to various kinds of liability measures for illegal activities in the field of technologies in question in the near future will become one of the most difficult to resolve not only in foreign, but also in Russian legal practice [2, p. 125].

Today we can observe how artificial intelligence subordinates to its influence an increasing variety of spheres of human activity, including economics for the analysis of market mechanisms; the financial sphere in which algorithms of trade relations are studied; medicine for making various decisions and developing new patient treatment plans; household for the development of smart home technologies, etc.; transport; industry; defense, law and law enforcement [3, p. 43]. The list of uses of technologies based on artificial intelligence can be endless.

Discussion

In order to consistently analyze the issues related to criminal liability of robotics using artificial intelligence technologies, it is important to clarify this concept first of all. A fundamental document in our country in the field under consideration is the Decree of the President of the Russian Federation No. 490 of October 10, 2019 "On the Development of Artificial Intelligence in the Russian Federation", which sets priorities in this direction, as well as clarifies the terminology of artificial intelligence, which, as follows from this legislative act, "should be understood as a set of technological solutions that allow simulating human cognitive functions and obtaining results when performing specific tasks, comparable, at least, with the results of human intellectual activity" [4, p. 123].

The cited definition provides a basis for further discussion about the properties of technologies based on artificial intelligence. However, it should be emphasized that a very similar explanation of robotics with artificial intelligence can be found in recent publications of domestic researchers.

Key features of artificial intelligence are the following: presence of a technical device (cyberphysical system) capable of perceiving information and transmitting it; a certain degree of autonomous operation without human participation (subjectivity) in the absence of such a system; an ability to analyze, generalize information, develop intelligent solutions based on the studied data (thinking), self-awareness; an ability to learn, independently search for information and make decisions based on this information" [5, p. 37].

The majority of experts, analysts and specialists studying this issue agree upon general characteristics of these technologies [6, p. 31]. They note that a physical nature of this concept is expressed in a technical system created to imitate human mental processes and implement functionality subject to it [7, p. 25]. Domestic experts believe that artificial intelligence technologies are a complex, specially created software and hardware system that has capabilities to perceive and analyze information data, as well as self-learn [8, p. 43].

Meanwhile, it is worth noting that the problems associated with the legal definition of the technology in question are primarily actualized by the complete absence of any of its legal characteristics, including as a subject and object of legal relations. What is more, most definitions of this technology have significant drawbacks. According to a number of authors, artificial intelligence technology should be necessarily subject to the regime of a legal entity, because both of them are fictitious in a civil sense [9, p. 162].

However, the author of this work is absolutely not satisfied with this approach of some Russian researchers to new technologies, because robotics and other digital products operating using artificial intelligence do not have features of legal entities. Despite the fact that both of these legal phenomena still have the function of fiction, they are in no way united by a mecha-

nism for legal regulation, and this, by the way, is a very important issue.

So, it seems reasonable to develop mechanisms for protecting public relations that arise in the robotics evolution process using new technologies. In this regard, we would like to specifically note that today it is already well known that the technologies in question exist in electronic form as computer programs that ensure functioning of robotics and other digital devices. And as noted by domestic experts, analyzing issues of legal personality of robotics, it is fixed in special registries, while also having a significant material value. Therefore, as liability measures in case of violation of legal relations caused by activities of these technologies, a number of researchers propose to terminate functioning of the product using new technologies for work and then reprogram it, or destroy it altogether.

Meanwhile, the author finds domestic experts' approaches very controversial. They should be substantiated and the mechanism should be disclosed in more detail, but not just declared. So far, the author, like many other researchers of the problem under consideration, is not sure how, and most importantly by whom, computer programs can be recognized as subjects of legal relations, being subjects and objects of legal regulation.

According to V.A. Laptev, artificial intelligence technologies possess a number of separate elements of subjective law, and at the same time act as objects of this law [10, p. 87]. Therefore, in the coming years, liability measures for the activities of artificial intelligence technologies will be assigned to their creators – manufacturers, as well as owners – operators, similarly to liability measures in case of harm caused by sources representing increased danger. However, in the future, the technologies in question may be endowed with legal capacity, the possibility of independent legal liability, and after such steps, their legal personality will exist in the digital space, which may be a significant risk that will lead to an increase in criminal encroachments using artificial intelligence for criminal purposes.

In such situations, robotics will be an instrument or a means of committing criminal encroachments, and it is necessary to involve persons using it for criminal purposes in criminal liability measures. In this regard, there is a need to conduct separate studies specifically devoted to analyzing the question of whether the degree of public danger of criminal attacks that are committed using artificial intelligence technologies increases. Obviously, it seems grow, since such technologies may be used for committing highly skilled murders. Therefore, it is crucial to work out amendments to Part 2 of Article 105 of the Criminal Code of the Russian Federation (hereinafter – CC RF) fixing appropriate elements.

At the same time, the author of this study shares the point of view on the need to bring to justice people (developers, manufacturers, owners, tenants, operators, etc.) when any harm is caused by robotics in the course of its activities [11, p. 281]. At the same time, in the case of an illegal act in the area under consideration, it is obvious that it will be extremely difficult for law enforcement authorities to determine liability measures of specific persons related to products and technologies using artificial intelligence for their functioning: manufacturers, persons selling these products, owners, etc.

With the development of new digital technologies, the problems associated with their legal regulation will not decrease. In particular, it will not be easy to punish developers of this digital product, since the technologies analyzed in this study have the ability to self-learn. Therefore, they may reprogram themselves and receive necessary data from external sources in the process of an appropriate upgrade, thereby changing their settings; it may entail a series of unforeseen events leading to negative consequences. In such cases, it will be very difficult to bring to justice the persons who invented such a product or later reprogrammed it.

It is worth noting that few scientists support the need to impose liability for illegal activities carried out using artificial intelligence technologies in accordance with traditional criminal law norms, in particular, Paragraph "b" of Part 2 of Article 238 of the Criminal Code of the Russian Federation. At the same time, as noted by domestic experts, there are grounds to bring to justice persons responsible for artificial intelligence activities, namely in those cases when "in the process of creating system data, mistakes were made that subsequently led to the commission of illegal acts; these systems were unlawfully accessed, which served as the

reason for their damage" [12, p. 570], or the improvement of their functionality resulting in the commission of a crime; the technologies in question, having the opportunity to self-learn, came to the conclusion about the necessity to commit an illegal act.

It is important to realize that the technologies in question are just digital processes inherent in a certain software. At the same time, they are not a conscious being with actions and deeds, therefore they cannot have the same status as individuals, and of course they do not belong to the subjects of legal liability indicated above. In the process of legal regulation, the technologies in question cannot be legal entities either, because they do not have many features inherent in these entities. In accordance with the Russian legal doctrine, in the case of illegal activity, liability measures may be imposed on any persons, organizations, or the state, while in accordance with Article 19 of the Criminal Code of the Russian Federation, subjects of liability are sane individuals who have reached the liability age.

It is also important to note that since artificial intelligence is primarily a computer system, then "on the basis of Article 274 of the Criminal Code of the Russian Federation, criminal liability measures are applied, including as a result of the violation of rules for storage, processing or transmission of computer information and information and telecommunication networks" [13, p. 35]. So, we back Russian experts' idea that the indicated legislative norm can also be applied in all respects in cases of application of the technologies in question. At the same time, Article 274 of the Criminal Code of the Russian Federation is blank, referring to various kinds of rules that establish mechanisms for working with means "for storing, processing, transferring protected computer information data, information and telecommunication networks and terminal equipment in an agency or organization, violation of which entailed destruction, blocking, modification, or copying computer information that caused major damage" [14, p. 124].

According to the author, criminal acts committed using new technologies should be punished in accordance with general norms providing for penalties for committing illegal acts against a person, against property, against state power, interests of public service, and service in local governments, etc. In the same way, it is necessary to resolve issues in situations in which robotics using the technologies in question were subjected to unauthorized access, as a result of which there was a failure or improvement of its functionality leading to a criminal encroachment. In cases where unauthorized access was carried out using new technologies to have a negative impact on various types of objects associated with critical information infrastructure, liability should occur under Article 274.1 of the Criminal Code of the Russian Federation.

Summarizing the study of the formation of mechanisms related to the protection of public relations arising in the process of development of new technologies, it is important to note that humanism has always been one of the fundamental principles of legal regulation, which forms an anthropocentric legal shell around the inviolability of human rights and freedoms. Today, it is also important to pay great attention to the development of principles for legal regulation of new technologies, since in addition to general legal principles of humanism, legality, and prohibition of discrimination, the principles under consideration should also include legal regulation, which will set the right direction when building interaction among two types of intelligences [15, p. 15].

Obviously, when developing new technologies, one should be guided by principles of the impossibility of causing damage or any harm to people, confidentiality, respect for human dignity, justice, autonomy of will, informed consent, etc. It is expected that certain principles underlying legal regulation of technologies using artificial intelligence, such as neural networks, as well as various objects of robotics, will be added [16, p. 41].

In short, emerging new legal relations, which are in the stage of active formation, require adequate development and a legislative framework, since newly emerging innovative products can undoubtedly be potentially dangerous for humanity, due to their insufficient knowledge and the difficulty to accurately forecast the genesis of relations associated with their use. In this regard, modern developments of the latest criminal law protective mechanisms are particularly relevant, since they would be able to quickly suppress possible public dangers, which these criminal law mechanisms represent as the only

reliable criterion for establishing criminal liability measures for the illegal acts in question.

Conclusion

Thus, the problem of criminal liability of robotics using artificial intelligence technologies should be solved first of all in order to protect the interests of society, which will face and also may depend on activities and results of the decisions taken by the technologies in question. In this regard, the legal status of these technologies should include a number of obligations, prohibitions and liability measures in cases of their violation. In general, current problems in the field of criminal liability of new technologies can be divided into groups. The first one is related to unlawful modification of programs; in order to effectively prevent these encroachments, it is necessary to amend current versions of some articles of the Criminal Code of the Russian Federation. The second group is directly related to liability measures for causing various kinds of harm and damage to machines and equipment using artificial intelligence technologies in their work.

The conducted research indicates the impossibility of usual methods to fully protect the well-being of individuals. Current criminal law mechanisms aimed at existing socially dangerous acts may become unable to respond effectively to the ongoing transformations and at the same time will not be able to format new digital criminally punishable actions in their own way. Therefore, active use of the latest digital technological processes for the transmission and dissemination of information data forces the state to look for new solutions related to the criminal law protection of public relations that arise in a modern digital society. At the same time, it is important that designs of new protective mechanisms assess potential public danger arising from the development of new technologies as realistically as possible.

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INFORMATION ABOUT THE AUTHOR

PETR N. KOBETS – Doctor of Sciences (Law), Professor, Chief Researcher at the Center for Organizational Support of Scientific Activities of the All-Russian Research Institute of the Ministry of Interior of Russia, Moscow, Russia, pkobets37@rambler.ru, https://orcid.org/0000-0001-6527-3788

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Effectiveness of the Investigation of Criminal Cases when Using the Area Functioning as a Pre-Trial Detention Center on the Territory of a Juvenile Correctional Facility

IGOR' YU. SAMOKHVALOV
Arzamas Branch of the Lobachevsky State University of Nizhny Novgorod, Arzamas, Russia, herrysam@mail.ru, https://orcid.org/0000-0001-7932-6238

AIDARKAN B. SKAKOV
B. Beissenov Karaganda Academy under the Ministry of Internal Affairs of the Republic of Kazakhstan, Astana, Republic of Kazakhstan
Academy of the FPS of Russia, Ryazan, Russia
aidarkan@mail.ru, https://orcid.org/0000-0003-4199-5473

MAKSIM V. STEPANOV
Nizhny Novgorod Academy of the Ministry of the Interior of Russia, Nizhny Novgorod, Russia, stepanov52m@mail.ru, https://orcid.org/0000-0001-9946-4988

Abstract

Introduction: the article considers the problem of using areas functioning as pre-trial detention centers located on the territory of a juvenile correctional facility in the process of conducting investigative actions to investigate criminal cases against minors. *Purpose*: to study possibilities of areas functioning as pre-trial detention centers for the full disclosure and investigation of criminal cases against minors. *Methods*: general scientific (analysis, synthesis, induction, etc.), private scientific and special methods of cognition (comparative legal, formal legal, statistical). *Results*: the process of investigating a criminal case while keeping a minor in a pre-trial detention center has a number of negative sides associated with the negative influence of a criminal subculture, as a result of which criminal infection occurs, prison world rules are acquired, which ultimately complicates the process of investigating a criminal case. *Conclusion*: the process of conducting criminal investigation, while keeping a minor in a pre-trial detention center, has a number of negative sides associated with a negative influence of the criminal subculture, leading to criminal infection and acquisition of "prison" rules, which ultimately complicates the process of investigating a criminal case.

Keywords: juvenile correctional facility, area functioning as a pre-trial detention center, investigation of a criminal case, investigative actions, interrogation, confrontation, prosecutor's supervision.

5.1.4. Criminal law sciences.

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Introduction

When investigating a criminal case and pursuing the purpose of creating conditions for timely disclosure and due to the existence of certain obstacles to this activity, the investigating authorities have to isolate a suspect from the outside world for the period of investigation, that is, to place him/her in a pre-trial detention center. Juvenile suspects do not avoid such a procedure either. This decision, made at a certain stage of investigating a criminal case, is due to a number of objective and subjective reasons and is predetermined by the following: materials on the suspect's identity; factors confirming the possibility and intention of the suspect to hide from the investigation at the stage of inquiry; the need to ensure the suspect's safety by isolating him/her before considering the criminal case in court; active counteraction to the process of investigating a crime – the suspect's personal influence on witnesses, accomplices, victims; the possibility of concealing material evidence, refusal or active opposition to investigative actions, examinations, and working out lines of inquiry. This is far from a complete list of arguments and justifications for the extreme need to place a suspect in a pre-trial detention center. As for minors, we speak about complex cases of medium and special gravity, which pose a danger to society.

Discussion

The measure, necessary for successful resolution of a criminal case, such as placement in a pre-trial detention center, has positive and negative sides.

Territorial location of the detention center at a sufficient distance from the Department of Internal Affairs can be considered a negative circumstance, since it requires transferring the suspect, implying a number of necessary and sufficient legislative procedures established by the algorithm of actions of the convoy unit of the Ministry of Internal Affairs, which makes certain adjustments to the investigation procedure.

So, after receiving a sanction for placement in a pre-trial detention center, a person under investigation is transferred to the one, located, as a rule, on the territory of another district. Transfer of a suspect in accordance with current legislation is carried out a convoy unit on a special car and in compliance with established rules based on instructions and orders of the Ministry of Internal Affairs.

The administrative and legal status of convoy units is determined by the Constitution of the Russian Federation, legislation of the Russian Federation, normative legal acts of the Ministry of Internal Affairs of Russia "Instruction on the official activities of temporary detention facilities for suspected and accused persons of internal affairs bodies, security units and escort of suspected and accused persons" fixed by the Order of the Ministry of Internal Affairs No. 140 of March 7, 2006. The convoy ensures timely delivery of persons taken into custody to their destination, compliance with the delivery regime, prevention and suppression of attempts of the escorted to escape, self-harm, and attack the convoy.

From this moment on, the investigator should take into account that carrying out certain investigative actions with the participation of a suspect will be possible only with a personal visit to the pre-trial detention center or upon delivery of the suspect to the department of internal affairs at a reasoned request. Instructions and orders of the department of internal affairs prescribe mandatory clearing of the premises of the department of internal affairs from persons under investigation for the period of holidays or long weekends. Thus, the very procedure of being in custody, traveling in a paddy wagon under guard, the atmosphere of restrictions of the pre-trial detention center negatively affect the defendant experiencing strong psychological pressure. General emotional and psychological impact of places of detention, in most cases, creates a strong psychological stress and leads to a breakdown of suspects' psyche.

In accordance with Article 33 of the Federal Law "On the detention of the suspected and accused of committing a crime", minors and adults are kept separately. In practice, pre-trial detention centers have separate blocks, floors or cells to detain minors. In conditions of insufficient funding, strict isolation requirements are formally observed. Teenagers, being in neighboring cells with adults under investigation, are more or less influenced by them. A lack of specialized personnel for working with minors, due to the orientation of the institution towards the adult contingent, negates the solution of issues of their psychological and educational support. As a result, minors learn principles and rules of the "prison" world, which in turn causes a strong criminal infection and ultimately negatively affects the process of investigating a criminal case.

The very procedure of placement and stay in a pre-trial detention center has a negative impact on most suspects and, consequently, on the process of an objective investigation of a criminal case.

According to investigators and inquirers, after a suspect is placed in a pre-trial detention center, he/she gets into the criminal environment and is forced to take a position that runs counter to the investigation. Then, during any investigative action, investigators encounter active resistance of the suspect, clearly prompted by experienced cellmates. Moreover, he/she can demand the review of previously conducted and already recorded investigative actions, which indicates that the pre-trial detention center has a sphere of communication with criminally experienced cellmates, where the process of criminal investigation of a particular case is discussed. Such a situation causes significant difficulties in conducting an investigation, requires significant efforts to convince the suspect, collect more convincing evidence, and sometimes re-conduct investigative actions. This circumstance jeopardizes results of the initial stage of the inquiry, during which the main tasks of the investigation are solved or an actual basis for their further successful resolution is created [1, p. 85].

In connection with the above-mentioned circumstances, persons at large may use criminal ties to influence suspects. This is especially common when solving group crimes, when there is no real possibility of keeping members of the group in different pre-trial detention centers. This is evidenced by the facts of suspects' awareness of the stages of the investigation against members of the criminal group.

The criminal counteraction process is hampered by the impossibility to limit and control contacts of persons held in pre-trial detention centers due to their heavy workload and a lack of accommodation space, a small number of single cells and an insufficiently well-organized control system. Possible information leakage with the help of unscrupulous penal system employees and presence of uncontrolled forms of communication between suspects are other important negative factors. The solution to this problem is highlighted in a separate area of activity, which includes modernization of measures to prevent and suppress the occurrence of off-duty relationships between employees of the penitentiary system and convicts, criminal relationships between convicts and persons outside correctional institutions [2].

So, a suspect, who is taken out to the crime scene, examinations and investigative experiments, confrontation or identification, is given tasks to collect specific information and clarify certain circumstances of interest to the criminal structures of the detention center by criminal authorities. After investigative measures, a suspect returns to the isolation cell and has a conversation with the authority who has given the task. This is an almost uncontrolled channel of criminal communication with the outside world, which is difficult to counteract, since the information received by the suspect leaving the pre-trial detention center, as a rule, does not have material grounds (a letter called "malyava").

As a result of the influence of the criminal stratum of the pre-trial detention center on the suspect, aimed at countering an objective investigation, it is difficult for the investigator to convince the suspect of the infidelity of attitudes inspired by the atmosphere of the criminal environment, since, unfortunately, when opening a criminal case it is not possible to prove and reveal all the circumstances and subtleties of the case, much depends on the suspect himself, on his/her confessions, his/her desire to cooperate with the investigation.

Other suspects, being placed in a pre-trial detention facility, tend to confess the crime and

cooperate with the investigation, which further facilitates collection of evidence and conduct of investigative actions, strengthens suspect's loyal attitude to the staff of the investigative apparatus and to the investigation itself, and provokes the desire to wind it up as soon as possible. The reason for this is the suspect's collision with the punishment system and emergence of the desire to finish the process of collecting case materials as soon as possible, wait for the court decision and begin serving the sentence. It is believed that the sooner the suspect takes a position of cooperation with the investigation, realizes the need for a frank confession, the faster the process of opening a criminal case, collecting exhaustive evidence will go, and the investigation period will be shortened.

At the same time, it should be borne in mind that for the judicial authority making the final decision on the case, materials of the criminal case are a source of choice of arguments, according to the legal assessment of the criminal's identity. The judge, studying each investigative action, creates his opinion about the identity of the suspect, his behavior during the investigation, his personal life position in relation to the committed act, in order to further determine the measure of punishment commensurate with the crime committed, taking into account his behavior during the investigation. That is, the suspect's behavior during the investigation, his position during investigative actions, awareness of the need for cooperation with the investigation is an important step in the stage of moving towards the end of the investigation. The above-mentioned provisions can be considered a positive result of placement in a pre-trial detention facility and it is necessary to support this process with all available means.

In order to carry out necessary investigative actions according to a reasoned decision, a suspect is transferred to the territorial internal affairs department, where the officer investigating the criminal case has to carry out necessary operations in a short time. A suspect is brought to the internal affairs department, placed in a special detention center, where it is also impossible to talk about strict isolation and lack of communication with the criminal contingent due to a lack of separate detention cells.

These negative factors of the suspect's stay in a pre-trial detention center can be excluded if a pre-trial detention center functions at the premises of a juvenile correctional facility – areas functioning as a pre-trial detention center (PFRSI).

Section V "Improvement and humanization of penal policy" of the Concept for the Development of the Penal System of the Russian Federation for the Period up to 2030 approved and adopted by the Decree of the Government of the Russian Federation No. 1,138 of April 29, 2021 provides for a special approach in the implementation of preventive measures and the execution of criminal penalties to boost effectiveness of ensuring the rights of detained persons. Thus, it is prescribed to change the approach to detention conditions of the suspected and accused in pre-trial detention facilities, taking into account the fact that their guilt in committing a crime is not yet established by the court. This provision is new, although the previous concept (up to 2020) was focused on developing and adopting legislative acts aimed at humanizing Russian legislation, solving problems of observing the rights and improving detention conditions of the suspected, accused and convicted. Applying such an approach, i.e. isolating the suspected and accused will ensure objective investigation of a criminal case, excluding any possible means of countering this process.

Organizing a PFRSI at the premises of the juvenile correctional facility, one can achieve the following positive goals of detention:

– detention in a specialized institution, that is, adapted specifically for the contingent of minors;

– exclusion of contacts with persons with criminal experience;

– isolation of a suspect during the investigation, including a possibility for the investigator to control the suspect's social circle;

– conduct of investigative actions with a positive effect without "advisory assistance of persons with criminal experience";

– conduct of law enforcement intelligence by employees of operative units of a juvenile correctional facility.

Effectiveness of criminal investigation will depend entirely on the legally competent organization of detaining minors under investigation on the territory of a juvenile correctional facility.

So, let us consider organization of a PFRSI on the territory of a juvenile correctional facility.

One of the main positive factors of a PFRSI on the territory of a juvenile correctional facility is that this institution is located within the bus route, that is, there are no difficulties in transporting a suspect. Undoubtedly, internal affairs department employees find it convenient.

Besides, a PFRSI is located in a specialized penitentiary institution intended for working with minors, built in accordance with current legal requirements, starting from the gate through which convicts are admitted and ending with a technical security system anywhere in the facility, fully controlled by its administration. The material and technical base of the facility is at a fairly high level. There are rooms adapted and meeting all the requirements and standards of International conventions, where the necessary sanitary standards are observed. So, a juvenile correctional facility has an accommodation block (dormitory), an education block (technically well-equipped school and vocational school), a canteen, a production unit (industrial zone), a leisure block (club and sports complex, punishment cell room, medical office). All these premises have an appropriate equipment that meets current standards for detaining minors. The detention regime is ensured by a well-established service system of security detachments; certified employees of the facility administration; security and technical equipment of the facility; operational staff; constant monitoring by the prosecutor's office and public organizations.

Today, the state policy of punishing minors is undergoing significant changes associated with the rethinking of the legal approach to methods of correction of convicts in places of deprivation of liberty, focusing on increasing psychological and pedagogical impact on the convict's personality and using advanced forms of educational work, educational process organization, as well as active participation in labor education [3, p. 44].

Persons held in juvenile correctional facilities are, on the one hand, convicts, on the other, – minors. The process of serving a sentence has a number of specific features based on a humane attitude of the state towards adolescents and taking into account the specifics of their personality being formed [4, p. 89].

A juvenile correctional facility is staffed with competent employees.

The available material and technical equipment and professional staffing presupposes the work on re-educating juvenile convicts serving their sentences. A juvenile correctional facility operates in accordance with the current standards of detention and accommodation of convicts, their proper nutrition, education and upbringing. Developers of the Concept for the Development of the Penal System of the Russian Federation quite rightly believe that the reduction of existing penitentiary recidivism is achieved not so much by tightening punishments and increasing their terms, but by consistently humanizing the life of convicts with their simultaneous social inclusion [5, p. 2].

A PFRSI has the following advantages: persons under investigation are kept in isolated premises and employees competent in working with minors assist investigation.

Positive factors are reception and maintenance of persons under investigation. Upon admission to the pre-trial detention center on the territory of the facility, suspects undergo mandatory medical examination and psychological testing. They are explained basic requirements of the internal regulations, responsibility for their violation, and procedures for filing complaints, applications, appeals and petitions. Personal files are formed and diaries of individual educational work are started. A medical examination of the persons under investigation and their places of detention is carried out daily and conflict situations are resolved. Along with the ongoing educational work, religious and confessional traditions are observed. The above-mentioned work pursues goals of humanizing the process of investigating a committed criminal case, which makes it possible to exclude opposition coming from both persons with criminal experience and accomplices of the crime who are at large.

Let us consider issues related to the organization and conduct of necessary investigative actions with those under investigation at the premises of a PFRSI.

As indicated above, it takes less time to transfer a suspect to the internal affairs department for investigative actions. Besides, it is advisable to carry out certain actions on the territory of a PFRSI with the facility contingent acting as

decoys. The presence of persons under investigation on the territory of a PFRSI meets one of the key requirements of the criminal process – collection of evidence using a legitimate form of fixation. Evidence in criminal proceedings is an inseparable unity of factual data, that is, information about the circumstances to be proved and the procedural form in which these factual data are clothed [6, p. 25].

Let us consider interrogation of a suspect on the territory of a RFRSI (Article 173 of the Criminal Procedural Code of the Russian Federation). Interrogation as an investigative action designed to obtain maximum information from persons involved in the process of solving a crime occupies an important place in the array of all investigative actions and helps obtain evidence. The indication that each proof must have three mandatory features (admissibility, reliability, sufficiency) (properties) should be understood as a condition under which, in the absence of any property of the proof, there is no proof itself [7, pp. 89–90]. Therefore, work with the source of information, which is a suspect, should be conducted by a competent investigator, who takes an individual approach to the personality of the suspect. Accordingly, required conditions can be created for a suspect and the investigator in the PFRSI.

Isolation conditions give operative officers of the correctional facility the opportunity to work out versions using capabilities of law enforcement intelligence operations. We will not go into details of such work (this is the subject of another direction of the article), however, joint work in this direction using capabilities of operational staff is quite possible and justified. The technical equipment of the premises intended for interrogation can be organized at the highest modern level. This is the use of an office equipped with video and audio recording equipment, the possibility of external control over the conduct of the interrogation, which will allow interested persons to participate in the investigative action without the knowledge of a suspect.

The law requires the presence of a teacher and a psychologist in interrogation of a minor; therefore, involvement of the mentioned specialists of a juvenile correctional facility is reasonable. Further, this circumstance will once again confirm reliability of the received evidence.

If there is no contact between the involved teacher and the person under investigation, it is possible to invite a teacher or psychologist familiar with the minor. This circumstance will help to achieve good psychological contact and provide a friendly atmosphere during interrogation. It is much easier to invite such a specialist to a juvenile correctional facility than to invite him/her to a pre-trial detention center.

In cases of sexual offences, it is recommended that measures be taken to ensure that a teacher is of the same sex as a suspect. The embarrassment experienced by minors during such an interrogation in the presence of persons of the other sex may negatively affect the completeness of the testimony given [8].

Let us consider the possibility of identifying a person who has committed a crime (Article 193 of the Criminal Procedural Code of the Russian Federation) on the territory of a PFRSI. There should be a separate office of a suitable area, preferably with two entrances, equipped with technical means of video, audio and external control over the conduct of an investigative action. This is required for separation of the identifying person from the identified one before the investigative action. One of the significant advantages of a PFRSI being located on the territory of the juvenile correctional facility is the opportunity to use the existing contingent as decoys. There are persons similar in appearance, height, and physique to the identified one, which greatly facilitates the work of the investigator in preparing this investigative action and selecting decoys. The person is presented to the identifying person together with other persons, the number of whom must be at least three, who must have certain similarities in appearance, height, physique, clothes, and shoes. This requirement is aimed at minimizing the occurrence of an error in identifying the wrong person. The presence of identifiable signs that sharply distinguish the identified person from the rest will play the role of a leading question or hint.

So, we cannot but mention a reliability principle in fixing evidence. The reliability of evidence depends on the establishment of its relevance and admissibility, ensuring the possibility of using information in the proof process, and, consequently, conducting its verification [9].

It is unacceptable, for example, to line up persons of different nationalities with striking facial features. An important requirement for identification is compliance with the rule of being in the same clothes in which a victim could see him. It is possible to carry out a rare, but very effective voice and speech identification by attracting decoys from among the facility.

Any official of the criminal proceedings can recognize the evidence as reliable, but only the court can recognize the evidence as such on the part of the state. A guilty verdict cannot be based on evidence whose reliability is questionable. Considering the stated topic, we cannot but dwell on activities of the prosecutor's office to monitor compliance with the rule of law in the PFRSI. Practically every aspect of key activities of the prosecutor's offices in penitentiary institutions is also feasible in the PFRSI. These include supervision of the execution of penal and other (criminal procedure) legislation in penitentiary institutions; supervision of the compliance with the requirements of the law on the admission, registration and resolution of applications and reports of crimes committed or being prepared in these institutions, timely initiation of criminal cases and taking measures in each case of violation of the rule of law; conducting a preliminary investigation in cases of crimes committed by convicts and employees of penitentiary institutions; in case of emergency, attending penitentiary institutions to verify the circumstances, clarify and eliminate the causes and conditions that have caused incidents and bring the perpetrators to justice; supervision of the legality of orders, orders, and resolutions issued by the administration of institutions and bodies executing criminal penalties.

According to the regulations of the Order of the Prosecutor General of the Russian Federation No. 27 of August 5, 2003, prosecutors are instructed to constantly monitor the legality of orders and resolutions issued by the administration of correctional institutions and pre-trial detention facilities, as well as by the management bodies of the penal system, and immediately protest in case of non-compliance with the law. The prosecutor may use the right given to him to independently verify compliance with the law of legal acts of penitentiary institutions on his own initiative at any time convenient.

Thus, Russian legislation, represented by the prosecutor's supervision, carefully monitors strict implementation of legislation by the administration of correctional institutions. To do this, the Prosecutor's office has enough methods and levers in its arsenal that can prevent the use of illegal means against minors in custody and convicted persons.

Conclusion

Placement in a pre-trial detention center is a forced measure used by investigative authorities in order to prevent the suspect from escaping from the investigation, ensure the suspect's safety by isolating him/her before considering a criminal case in court, neutralize the suspect's active opposition to the crime investigation process and his/her personal negative influence on witnesses, accomplices, and victims, as well as prevent possible concealment of material evidence, refusal or active countering the execution of necessary investigative actions. However, in the process of being in a pre-trial detention center, a strong negative pressure is exerted on a suspected minor, since, getting into a criminal environment and communicating with people who have some experience of countering the law, he/she is forced to take a position that runs counter to the investigation. Further, encouraged by experienced cellmates, a suspect actively resists any investigative action. In a pre-trial detention center, it is not possible to exclude communication with a criminally experienced contingent due to objective and subjective factors. The cardinal solution to this problem is seen in the use of a PFRSI located on the territory of juvenile correctional facility that has a material base, an administrative apparatus of competent employees, and a clear organization of the security system and technical equipment. The evidence obtained in the process of conducting investigative actions when a suspect is kept in the PFRSI of a juvenile correctional facility will meet the requirements of objectivity and reliability.

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INFORMATION ABOUT THE AUTHORS

IGOR' YU. SAMOKHVALOV – Candidate of Sciences (Law), Associate Professor, associate professor at the Department of History, Social Studies and Law of the Faculty of History and Philology of the Arzamas Branch of the Lobachevsky State University of Nizhny Novgorod, Arzamas, Russia, herrysam@mail.ru, https://orcid.org/0000-0001-7932-6238
AIDARKAN B. SKAKOV – Doctor of Sciences (Law), Professor, Honorary Worker of Education of the Republic of Kazakhstan, professor at the Department of Criminal Law and Criminology of the B. Beissenov Karaganda Academy under the Ministry of Internal Affairs of the Republic of Kazakhstan, Astana, Republic of Kazakhstan; professor at the Department of Criminology and Organization of Crime Prevention of the Academy of the FPS of Russia, Ryazan, Russia, aidarkan@mail.ru, https://orcid.org/0000-0003-4199-5473
MAXIM V. STEPANOV – Candidate of Sciences (Law), Associate Professor, Head of the Department of Criminal and Penal Law of the Nizhny Novgorod Academy of the Ministry of the Interior of Russia, Nizhny Novgorod, Russia, stepanov52m@mail.ru, https://orcid.org/0000-0001-9946-4988

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Post-Penitentiary Probation: Conceptual Principles

IVAN V. DVORYANSKOV
Federal State Institution Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia
Vologda Institute of Law and Economics of the Federal Penitentiary Science, Vologda, Russia
diw@yandex.ru, https://orcid.org/0000-0003-0542-5254

Abstract

Introduction: the article considers post-penitentiary resocialization as a state policy direction on adapting convicts who have served their sentence or have been released from serving it to the conditions of life in society (social adaptation), protecting rights and interests, resolving social conflict caused by crime, and preventing new crimes. *Purpose:* based on the study of the legal nature and social conditionality of post-penitentiary probation, to identify its conceptual foundations (principles), solve the problem of their compliance with the legislative regulation of probation. *Methods:* the research is based on a dialectical approach to the study of social processes and phenomena. It uses traditional methods for the sciences of criminal law and criminology – analysis and synthesis; comparative legal; retrospective; formal legal; logical; and comparative. Private scientific methods are also used: legal-dogmatic and the method of interpreting legal norms. *Results:* the author describes doctrinal origins of the post-penitentiary probation concept as an alternative to punishment, criminal prosecution, and an important stage of adaptation of a convicted person to life in society, defined as resocialization, social adaptation and social rehabilitation in the Federal Law No. 10-FZ of February 6, 2023 “On Probation in the Russian Federation”. It is noted that when the developer of both the federal law and subordinate regulatory legal acts supplementing it do not have these or similar principles in their arsenal, this leads to conceptual shortcomings. As an example, we can draw attention to the fact that Article 3 of the above-mentioned federal law contains conflicting principles: coercion and voluntariness. The problem of uncertainty of the status of probation is noted, since, on the one hand, its application falls within the competence of the penal system, and on the other hand, there is not only regulation, but even mention of probation in criminal and penal legislation. The article argues that foreign experience in the application of probation should be combined with domestic characteristics of public relations covered by the field of probation. *Conclusion*: it seems that probation is an institution that, on the one hand, is not a punishment, and on the other hand, provides an opportunity to work with a convict, including after serving a sentence, returning him/her to society and adapting him/her to life in it. The author has developed four conceptual principles of probation: rejection of stigmatization, voluntary probation, focus on the return of a culprit to normal life in society (re-socialization), participation of the society in re-socialization of convicts. Shortcomings and contradictions of the legal regulation of probation are revealed.

Keywords: post-penitentiary probation, re-socialization, social adaptation, social rehabilitation of convicts, conceptual principles of probation, rejection of stigmatization, voluntary probation, focus on the return of the person who has committed the crime to normal life in society, participation of the society in re-socialization of convicts.

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Introduction

Crime in all periods of human history has been perceived as an absolute evil, as a negative social phenomenon that hinders development of society, causing significant damage to it. Until about the middle of the XIX century, the bearer of this evil was considered a person who had committed a crime. So, one of the first criminologists, C. Beccaria, considered this as a manifestation of evil human nature, on which he laid all the blame. Later, anthropological studies (in the broadest sense of the word) of fatality and immutability of criminal personality traits were reflected in the works of C. Lombroso, H. Goddard, M. Schlapp, E. Smith, E. Hutton, E. Podolsky, J. Lange, F. Stumpfl, Z. Freud and others. Their works were dominated by an instrumental (in some cases, utilitarian) approach to criminal law in general, and punishment in particular [1, p. 157].

With the development of sociological knowledge, doctrines appeared that explain causes of crime by external (objective) causes. Crime, based on the theory of social determinism (from K. Marx to E. Sutherland, N. Christie, V. Kudryavtsev, Ya. Gilinsky and others) is not only the fault of the person who committed it, but also of society, which allowed the existence of causes determining this crime. So, the so-called criminal is not a carrier of absolute evil, but a product of society with its problems and shortcomings.

Today, based on the knowledge gained about crime, we cannot be so much categorical about its absolutely evil nature. It is obvious that crime, in addition to its obviously harmful properties, has a number of positive effects. First, it is indicative. Crime shows those trends in the development of society that pose a danger to it both directly and in the future. Thus, it can be perceived not as a social disease in itself, but as its obvious symptom, which, in turn, makes it possible to adjust public policy, including on the basis of a forecast of the development of the identified trends. Second, crime triggers optimization of protective mechanisms of society. Finally, third, consideration of crime from the standpoint of the social determinism theory reveals a different view of the person who has committed a crime. In this regard, the fatality and inescapability of consequences of a crime, including punishment, are gradually replaced by ideas about restoration of social ties as a post-criminal practice

Since the middle of the XX century, researchers has been seeking for forms of re-socialization of former convicts, creating necessary conditions for compensation for damage and subsequent reintegration into society. Probation is one of these forms, which has shown its effectiveness in many countries.

Results

Punishment as the most severe punitive measure of the state does not have necessary capacities to implement the functions stated [2–6]. The Federal Law No. 10-FZ of February 6, 2023 “On Probation in the Russian Federation” (hereinafter – Probation Law) provides for alternative punishment mechanisms for re-socialization of convicts, including post-penitentiary ones.

Probation, so to speak, is a self-revealing phenomenon, a construct, a core that has yet to grow into layers of socially significant meanings in our country [7–9]. To comprehend its essence, one should consider conceptual principles. However, it is complicated by uncertainty of the probation status. On the one hand, according to Article 7 of the Probation Law, the Federal Penitentiary Service (FPS of Russia), in particular criminal enforcement inspections,

is its main subject. On the other hand, either criminal or penal legislation do not contain not only regulation, but even mention of probation. In this regard, it is unclear whether probation is still an institution of criminal or penal law and on what basis penal system bodies should perform probation?

Fundamental principles of probation should be important for theoretical understanding and practical application of probation procedures:

1) priority of the rights and legitimate interests of man and citizen;

2) humanism;

3) compliance with the rule of law;

4) rationality of the use of coercive measures, corrective, social and other measures and measures to stimulate law-abiding behavior;

5) consideration of individual characteristics, circumstances and needs;

6) openness (transparency);

7) continuity, voluntariness in the application of probation.

It is necessary to point out contradictions in the above list. So, Principle 4 involves the use of coercive measures (although it is not clear from the text of the Probation Law what measures are in question), while Principle 7 enshrines the completely opposite principle of voluntariness. This also indicates the uncertainty of the probation status, as mentioned above.

these principles, having an unconditional fundamental character, do not answer the question of the nature of probation, its essence and difference from other measures. In this regard, it is necessary to formulate probation principles reflecting its conceptual framework, i.e. those fundamental ideas that underlie this institution and allow a deep analysis of its essence, role and prospects.

Principle 1 – rejection of stigmatization.

Evolution of the theory of social danger of personality in the XX century, which gave rise, among other things, to the theory of punitive progression [10]. In this concept, it is not achievement of the goal that is important, but only its declaration, whatever that means. The process itself and escalation of punishment are important. Experience is not taken into account. It is impossible to explain this otherwise than by faith, a special form of religion.

Another feature of the concept of punitive progression is the attitude towards the convict as an object. Execution of punishment, correction, post-penitentiary supervision, and criminal record exclude the identity of a convicted person, his/her personality itself is devalued, apparently due to the postulation of its danger, declared timed (criminal record), but in fact lifelong stigmatization (criminal stigma).

The content of the work on combating crime depends on the solution of the fundamental question: when a person is considered a criminal: at the time of the commission of a crime, after its commission or even before its commission. Each answer determines the choice of special, different means.

After committing a crime, a person in the vast majority of cases is not hopeless and can be resocialized. Helping him/her is a natural process resulting from sharing responsibility for what has happened with him.

Probation should first of all be considered as an idea, a construct, a core. There are two alternatives, in particular, to isolate oneself from convicts, including former ones, like from lepers, or to work with them, perceiving them as potentially normal members of society. Probation is based on the second one and assumes that re-socialization is necessary and real. Its means and methods that form the implementation mechanism are another question, which depends on what we want, how soon and at what price (what is acceptable and what is not). The main thing is that this mechanism does not make the idea practically unattainable. And this is already a big problem, the essence of which lies in the clarity and degree of understanding of the idea itself.

Principle 2 – voluntariness. It solves two interrelated tasks at once. First, it excludes the compulsory nature of probation, which fundamentally distinguishes it from punishment and other criminal law measures associated with the implementation of criminal liability. Second, it lays down an important and effective mechanism for the feasibility of probation procedures, since their application is initiated by the convict/person who has served his/her sentence, which, in fact, makes it pointless for him/her to disagree with their conduct.

Principle 3 – focus on the return of the person who has committed the crime to normal life in society (re-socialization).

As we have written earlier, attempts to implement non-punitive forms of re-socialization have been repeatedly made in Russian history. Thus, in the Soviet period (since the 1960s), the use of probation and parole with mandatory labor certainly solved such a task, which even gave reason to assert the duality of courses of criminal policy of the USSR, bearing in mind that in parallel with these measures there were goals of punishment having a completely different (forcibly punitive) achievement mechanism [10].

To date, this duality of courses persists, since with the immutability (except for minor editorial changes) of punishment goals, new crime reduction forms are searched for and introduced. They are focused more on causes of crime rather than their consequences (for example, suspended sentence, commutation of punishment, exemption from criminal liability in connection with active repentance and reconciliation with the victim, probation [11, pp. 117–118].

Though, along with this, regulatory legal acts that are conceptually opposite are adopted. The Federal Law No. 155-FZ of June 11, 2022 "On Amendments to the Labor Code of the Russian Federation" establishes that an employment contract with an employee who has not submitted a certificate to the employer in accordance with Part 1 of this Article is subject to termination on the grounds provided for in Paragraph 13 of Part 1 of Article 83 of the Labor Code of the Russian Federation. Thus, restrictions on employment directly related to the management of passenger taxis, buses, trams, trolleybuses and rolling stock of off-street transport when transporting passengers and luggage for persons with a criminal record for a number of crimes, among which robbery is quite common [12].

The duality of the state policy in the field of prevention of repeat crime is also expressed in the legalized stigmatization of persons who have committed crimes in labor legislation, which directly contradicts criminal legislation. For example, according to Article 331 of the Labor Code of the Russian Federation, persons with or who have a criminal record are not allowed to teach, and even those who have ever been criminally prosecuted for a number of crimes against the person (in fact, for all crimes, since the personnel services of universities require an undifferentiated certificate of no criminal record, including without indication of repayment or removing it).

In relation to the civil service, bans on the admission of persons with criminal records (even those that have been removed or extinguished) are of an exceptional nature. Moreover, the applicant's relatives are also checked for its presence, which is an indirect reference to Article 7 of the Criminal Code of the RSFSR of 1926: "In relation to persons who have committed socially dangerous acts or pose a danger due to their connection with a criminal environment or their past activities, social protection measures of judicial correctional, medical, and pedagogical nature are applied".

Principle 4 – participation of the society in re-socialization of convicts.

A Latin word "re-socialization" means returning to society, restoring lost social life skills, and acquiring social values, norms, and customs lost by convicts due to defects in primary socialization or under the influence of criminogenic factors. In general, the main meaning of re-socialization is adaptation of a person to life in society and resolution of conflict with this society in the elimination of moral confrontation and mutual hostility. This is important for the society that does not want escalation of inner conflicts and growing of crime rates, primarily recidivism. Therefore, an important task for it is direct participation in re-socialization of convicts, i.e. persons who have violated the law and plan or at least assume its violation in the future.

Undoubtedly, all of this would be a set of beautiful but meaningless words without appropriate mechanisms to ensure re-socialization, including through the participation of representatives of society in this process.

Such a mechanism in the form of probation centers is provided for by the Federal Law No. 10-FZ of February 6, 2023. Article 27 of the said law contains a dispositive provision on the possibility of establishing such centers in order to assist persons in respect of whom post-penitentiary probation is applied, including in providing a temporary place of stay, by non-profit organizations, including religious organizations and public associations, and socially oriented non-profit organizations. The construction "can be created" speaks about the dispositivity of the prescription. Thus, they are not mandatory from the point of view of the legislator.

So far there is no practice of creating probation centers and their functioning. According to the FPS of Russia, in 2025, the first probation centers will appear in Khabarovsk Krai, Vladimir and Sakhalin oblsats and Khanty-Mansi Autonomous Okrug, relevant agreements have been concluded [13].

However, at the moment, a number of problems remain unresolved, in particular, related to the status of probation centers and the content of their activities.

The essence of the first problem is as follows. On the one hand, probation centers are normatively fixed in the Probation Law. Also, an indirect reference to them is contained in Order No. 350 of November 29, 2023 "On Re-Socialization, Social Adaptation and Social Rehabilitation of Persons in respect of Whom Probation is Applied in accordance with the Federal Law No. 10-FZ of February 6, 2023". Paragraph 62 of this order states that "in order to provide assistance to persons in respect of whom post-penitentiary probation is applied, including the provision of a temporary place of stay, they may be sent to probation centers".

On the other hand, probation centers do not have a clearly defined subjectivity, in particular, they are not classified by the Probation Law as probation subjects (Part 1 of Article 6), and are not even mentioned among those who can be involved by probation subjects in order to implement measures of re-socialization, social adaptation and social rehabilitation of persons in respect of whom probation is applied, including on the basis of agreements concluded with probation subjects (Part 3 of Article 6).

Hence, probation centers are not its independent subject, but act only as one of the tools for its implementation. At the same time, when referring to Article 27 of the Probation Law, one may encounter a very contradictory definition of the status of probation centers. At the beginning, it says that in order to assist persons in respect of whom post-penitentiary probation is applied, including in providing a temporary place of stay, non-profit organizations, including religious organizations and public associations, socially oriented non-profit organizations may create probation centers (Part 1). So, it implies that the initiative to set up such centers belongs to the specified organizations and associations. But already in the second part of the analyzed article there is a provision that the rules for organizing activities of probation centers are approved by the federal executive authority, which performs functions of developing and implementing state policy and regulatory legal regulation in the field of execution of criminal penalties. Literally, this means that the Ministry of Justice of Russia or the FPS of Russia issues norms (rules) regulating activities of public organizations and associations that are not subordinate to it. As a result, it remains unclear to whom probation centers will be subordinated, how they will be funded, whether bodies and institutions of the penal system will perform any functions in relation to probation centers (for example, supervisory, organizational, etc.)? If so, why non-profit, religious organizations, public associations, socially oriented non-profit organizations should be interested in creating such centers?

It seems that the problem can be solved as follows. Interested organizations and associations, on the basis of an agreement with the probation subject, may establish probation centers for the purposes specified in Article 27 of the Probation Law, in accordance with their statutes. For its part, a probation subject should, by agreement (and possibly jointly with the founder), develop rules for the operation of the probation center, participate in its work, provide financial and other assistance. It doesn't have to be the Federal Penitentiary Service. Besides the FPS of Russia, these probation subjects also include other federal executive authorities; state authorities of the subjects of the Russian Federation; state institutions of the employment service; social service organizations. Local governments are entitled to participate in probation procedures together with probation subjects. A probation subject may enter into an agreement with an existing center that provides assistance to convicts.

Obviously, it is impossible to draw a parallel between probation centers and areas functioning as correctional centers. The law does not provide for the possibility of establishing probation centers at enterprises and commercial organizations on the initiative of the probation subject. We emphasize once again that according to Part 1 of Article 27 of the Probation Law, the initiative to create probation centers should belong specifically to non-profit organizations,

including religious organizations and public associations, and socially oriented non-profit organizations. Probation subjects can only involve them in the implementation of probation. Their relationship should be built only on a voluntary basis in accordance with civil legislation.

Let us also consider a problem of the content of activities of probation centers. The mentioned law contains only the most general provisions in this regard. This is, first, the provision of assistance to persons in respect of whom post-penitentiary probation is applied, and second (including) the provision of a temporary place of stay. In this regard, the idea of probation centers in itself seems to be quite capacious and, if properly developed, can give a serious impetus to the implementation of probation. And it will not be formal, but factual. Already today, in a number of regions of the country, there are various forms of assistance to former convicts in accommodation, employment, social welfare, cultural development, etc.

Thus, for the past 20 years, the Prisoner Assistance Foundation has been consistently working out and implementing programs to provide support to people in need of socio-legal post-penitentiary adaptation, protection and psychological assistance. It contributes to creating conditions for effectively reducing recidivism rates among people released from correctional institutions. The Foundation also opened four Aurora rehabilitation centers at correctional facilities in 2023, whose work is aimed at restoring social, household, labor and other skills necessary upon return from correctional facilities.

In Altai Krai, the project "Together we will cope!" on re-socializing women released from correctional facilities in the region was successfully implemented in 2022. Rehabilitation mediation programs and family conferences became part of the women's release preparation and social support after their release from correctional institutions.

The Center for Social Assistance "Step Forward" and the Chairman of the Public Monitoring Commission of Khanty-Mansi Autonomous Okrug have been helping socially vulnerable categories of people since 2009. In 2018, this organization entered the register of social service providers and began to provide social services with accommodation, adding new categories of people. All projects are aimed at re-socializing convicts, those released from prison and homeless people, who have nowhere to go after their release [14].

Similar projects exist and are successfully operating in many other regions of the Russian Federation.

Thus, in fact, work on the creation and operation of centers for assistance to former convicts has been underway for a long time, and a very large and diverse experience has been gained in the functioning of such institutions. Therefore, we believe that one should not reinvent the wheel, but consistently give these institutions the status of probation centers, concluding appropriate agreements and including their founders in the unified register of persons to whom probation is applied, provided for in Article 34 of the Probation Law.

At the same time, the implementation of a unified state policy in the field of probation requires unified regulation of the creation and operation of probation centers. We believe it necessary to develop and issue an appropriate order of the Ministry of Justice of the Russian Federation containing general issues of organization, functioning and interaction, as well as standard forms of agreements with the founders of probation centers, charters, rules of their functioning, organization, reorganization, etc.

Conclusion

As a conclusion, it should be noted that probation and punishment are different institutions in their legal nature, goals and tasks. Unlike punishment, it is a non-punitive form of neutralizing the causes and consequences of committing a crime, which allows persons who have committed crimes that do not pose a high public danger to prove their desire and ability to live a law-abiding life without stigmatization (obtaining virtually lifelong status of a convicted person with significant restrictions in social life, employment and other areas) and inevitable personal deformation caused by punishment.

The goal of the state policy to combat crime cannot and should not be unconditional revenge for what has been done. Its main purpose is to prevent crime, which involves elimination of its causes and conditions, as well as return of the culprit to a normal (law-abiding) life in society. Therefore, when it is possible to do without the use of punishment, the state applies more

humane forms of response, both within the framework of criminal liability (suspended sentence, release from punishment) and outside it (exemption from criminal liability, compulsory medical measures, as well as educational influence on minors, etc.).

Therefore, it is necessary to introduce our own probation system, reflecting needs of our society in the functioning of this institution. Post-penitentiary probation is one of its forms. According to the law, it can be applied to persons who have been released from institutions that carry out punishments in the form of forced labor or imprisonment, who find themselves in a difficult life situation and need re-socialization, social adaptation and social rehabilitation, persons who have served any sentence or been released from serving it on non-rehabilitating grounds provided for by criminal law.

It seems that only strict adherence to the analyzed conceptual principles of probation will ensure its effectiveness, which implies successful return to society of the majority of people who have committed crimes and reduction in social conflicts and recidivism rates.

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INFORMATION ABOUT THE AUTHOR

IVAN V. DVORYANSKOV – Doctor of Sciences (Law), Professor, Chief Researcher at the Department for the Development of Methodologies for the Execution of Criminal Penalties without Deprivation of Liberty of the Center for the Study of Problems of the Execution of Criminal Penalties and Psychological Support for Professional Activities of Employees of the Penal System of the Federal State Institution Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia, professor at the Department of Penal Law and Organization of Educational Work with Convicts of the Law Faculty of the Vologda Institute of Law and Economics of the Federal Penitentiary Service, Vologda, Russia, diw@yandex.ru, https://orcid.org/0000-0003-0542-5254

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Administrative Arrest Appointment as an Exclusive Prerogative of the Court

STANISLAV V. SHCHEPALOV
Supreme Court of the Republic of Karelia, Petrozavodsk, Russia, schepalov@mail.ru, https://orcid.org/0009-0004-8835-247X

Abstract

Introduction: in connection with the scientific discussion on the expediency of the judicial procedure for the consideration of cases of administrative offenses, the article describes the background of its appearance in domestic law. It is largely related to the imposition of such a type of punishment as administrative arrest. The decree that marked the emergence of administrative liability in the RSFSR, at the insistence of V.I. Lenin, the appointment of arrest for violation of sanitary standards was entrusted not to the court, but to the housing and sanitary inspection. Further food commissioners and local executive committees became entitled to arrest citizens. However, the administrative authorities, using arrest as an additional resource to perform their basic managerial functions, often exceeded their powers. As a result, the Soviet government rolled back such a reform in 1922–1925. Deprivation of liberty became a criminal punishment within the court jurisdiction. In 1956, the institution of administrative arrest was revived, but within the framework of the judicial prerogative and simultaneously with the emergence of an independent judicial procedure for the consideration of cases of administrative offenses. *Purpose*: to substantiate the need to preserve the judicial procedure for the appointment of administrative penalties as a form of preliminary judicial control. *Methods*: formal-legal, historical-legal, comparative-legal. *Results*: the jurisdictional function of administrative bodies is secondary and, as a rule, is considered by them as a means to perform the main and more time-consuming managerial function, which is confirmed by the history of Soviet law. If the governing bodies are given the authority to independently impose the most severe punishments, they may violate personal freedom of a citizen. *Conclusion*: it is necessary to preserve judicial jurisdiction of cases involving administrative arrest. Othrewise, subsequent judicial control will not be able to fully restore violated personal rights.

Keywords: judicial proceedings, administrative justice, administrative liability, people's court, Soviet administrative law, administrative arrest.

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Introduction

The increasing role of courts in the consideration of cases of administrative offenses is noted as an important trend [1]. However, today there is still a discussion about whether there is a need for judicial review of such cases. The role of courts could be limited only to the consideration of complaints, and administrative liability is extrajudicial by its nature.

B.V. Rossinskii reasonably draws attention to the fact that judicial review complicates and delays proceedings, is very expensive for the state, and recognizes a non-judicial model of proceedings in cases of administrative offenses (hereinafter referred to as the PCAO) as the most acceptable [2]. A.I. Kaplunov, also advocating the non-judicial model of the PCAO, notes that the nature of administrative liability is in the imposition of its control and supervisory authorities, and the judicial order represents its "mutation". At the same time, the authoritative scientist expresses his position on the expediency of minimizing the competence of judges to consider administrative and tort cases [3]. E.V. Trunova also recognizes validity of the non-judicial model of the PCAO [4].

Other researchers speak about the need for a judicial procedure for the consideration of administrative and tort cases. The importance of applying judicial control over the public administration activities is substantiated by the fact that administrative sanctions have significantly tightened, due to the complexity of the economy and environmental management [5]. L.L. Popov and Yu.I. Migachev note that judges consider the most serious and complex cases involving application of strict administrative penalties [6]. S.N. Bratanovskii backs the idea emphasizing that the consideration of such cases by a judge is a reliable guarantee of suspects and victims [7].

The ambiguity of understanding limits of judicial intervention in administrative prosecution has largely led to difficulties in codifying procedural legislation on administrative offenses. The draft Procedural Code of the Russian Federation was developed in 2020 [8] but is still under preparation [9].

Lawyers supporting the court's appointment of administrative punishment refer to administrative arrest. Indeed, only in rare cases motorists detained under "arrest" articles of Chapter 12 of the Administrative Code persistently ask to be sent to an administrative detainee cell, but not to be deprived of their driver's license. Otherwise, arrest deservedly enjoys the status of the most severe type of administrative punishment, which has a tangible preventive value.

Taking into account the lively discussion, we would like to propose a short foray about how the appointment of administrative arrest has become a judicial prerogative in domestic law. In our opinion, it gives good reason to believe that the judicial procedure for administrative proceedings should be preserved. It also provides a basis for thinking about what criterion should be used to distinguish jurisdiction of such cases.

Research

The institution of arrest accompanies the entire evolution of domestic administrative and delictual legislation. Administrative arrest was formed out of criminal and penitentiary law, including the institution of deprivation of liberty, and was originally called that way. Imprisonment for up to 1 month for unsanitary housing maintenance was introduced in the first normative act of Soviet Russia, the Decree of the Council of People's Commissars on Measures for Correct Distribution of Housing among the Working Population of May 25, 1920, which marked the emergence of administrative liability. It was appointed by the housing and sanitary inspection. The draft decree originally provided for the imposition of such a severe punishment by the people's court. However, this procedure became extrajudicial at the insistence of V.I. Lenin, who, stating "weakness" of the people's courts [10], pointed out the need to punish, without trial, by imposing arrest for up to 1 month and forced labor for up to 2 months for uncleanness, etc. [11].

Another regulatory act on administrative liability again provided for the same type of punishment, which was officially called arrest. The Decree of the Council of People's Commissars on the Natural Tax on Wool of May 10, 1921 stipulated that "citizens who have not paid the tax bear personal and property liability in the administrative and judicial order". The Decree of the Council of People's Commissars of May 25, 1921 established "to grant the right to county food commissioners to arrest individual faulty payers for a period not exceeding two weeks

and to district administrative commissioners – for a period not exceeding one week, as well as the right to impose a surcharge".

The procedure for bringing to administrative liability in 1920–1937 was exclusively extrajudicial, and the sphere of administrative prosecution itself was steadily expanding. The Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of June 23, 1921 granted the authority to impose administrative penalties to presidiums of county executive committees in county towns and to collegiums of provincial management departments in provinces. Among the types of penalties in the first edition of the document, imprisonment for up to 2 weeks, forced labor for up to a month and a fine of up to 50 thousand rubles were fixed. This decree led to the widespread creation of local administrative jurisdiction.

Law enforcement practice showed that arrest was usually more effective than fines. However, this had a downside. The administrative authorities were unnecessarily "carried away" with the appointment of this type of punishment. The desire to impose arrests was realized even at the cost of deliberate abuse of authority. At the same time, it disproportionately increased the number of administrative detainees, increasing the burden on the penitentiary system. The reason was quite understandable. The main function of the state control bodies was to resolve issues of public administration, of which the state control was a part [17, p. 93.]. In this regard, the existing arsenal of administrative coercion measures was openly or implicitly put at the service of managerial goals. The law was interpreted through their prism, the principles of justice, proportionality, etc. were "refracted". Therefore, two years later, the Soviet government began to limit the use of extrajudicial arrest, despite the objections of individual law enforcement bodies.

The new Regulation on the procedure for issuing mandatory decrees and imposing administrative penalties for their violation of July 27, 1922, which established limits of the rule-making of local authorities in terms of the introduction of administratively punishable corpus delicti, no longer provided for arrest. The first Criminal Code of the RSFSR of 1922 outlined the direction of the criminal law policy, according to which deprivation of liberty is a criminal punishment and a judicial prerogative (Articles 9, 32, 34). The first Soviet Constitution did not yet contain a judicial guarantee for the protection of personal freedom, and historically this principle was not constitutional, but criminal. Due to the lack of a judicial procedure for bringing to administrative liability, the institution of administrative arrest ceased to exist.

In 1923, the NKVD submitted to the Council of People's Commissars and the Presidium of the Central Executive Committee a petition to grant provincial executive committees the right to impose administrative arrest again. It was motivated by the unsuitability of forced labor without imprisonment, since unemployment "put the convicted in a privileged position". It was also argued that a fine in the absence of the right to replace it with arrest was ineffective [13]. However, the proposal raised objections. The People's Commissariat of Justice pointed out that the institution of forced labor could be organized in places of deprivation of liberty, and also, "according to the general principle adopted by the session of the Central Executive Committee when considering the Criminal Code, administrative arrest was not allowed" [14].

In 1925, in accordance with the Decree of the Central Executive Committee and the Council of People's Commissars of the RSFSR of April 6, 1925 "On the Procedure for Issuing Mandatory Resolutions by Volost and District Executive Committees and on Imposing Administrative Penalties by Them", local authorities (volost and district executive committees) became entitled to issue mandatory regulations and impose administrative penalties for their violation. Arrest was not listed among the latter. As an exception, it continued to exist for some time within the framework of administrative liability for tax offenses. Its use was strictly controlled by the Council of People's Commissars. Explanations on these issues were consistently issued by the relevant people's commissariats. In 1923, the Decree on a Unified Agricultural Tax of May 20, 1923 was adopted, which provided for bringing defaulters to justice "administratively and judicially". The immediate administrative penalty in accordance with the Instructions on the procedure for bringing to justice for violation of the decree on the unified agricultural tax and on the procedure for initiating referral

and consideration of cases of these violations, issued by the Central Executive Committee and the Council of People's Commissars of the RSFSR of July 11, 1923, turned out to be an arrest of up to two weeks. In the same year, three People's Commissariats issued a joint explanatory circular of the People's Commissariat of Justice, the People's Commissariat of Finance and the People's Commissariat of Food No. 184 of September 12, 1923 "On the Procedure for Applying Administrative Penalties in the Current Campaign to Levy a Single Agricultural Tax".

However, the practice of non-judicial arrest was accompanied by both drawbacks and abuses. It continued to be applied with deliberate abuse of authority and not only for tax offenses. Local authorities, already deprived of the right to impose arrest for violation of the norms established by them, ignored this restriction. As noted, "despite decrees on the procedure for administrative penalties, on the procedure for issuing mandatory decrees, we often see "orders" of local authorities, mainly heads of province militia, relating to all citizens ... containing the threat of a fine and even arrest by the administrative authorities, orders not based on legislative norms" [16, p. 10]. In this regard, it was recognized that "local authorities were still forced to apply arrest in violation of mandatory regulations" [17, p. 226].

Legal literature discussed advantages of the judicial procedure. A. Ageev describes the practice of imposing illegal arrests by volost executive committees, explaining them by the need to strengthen their authority and conduct measures on the cart tax and food tax. As a result, the arrested, who had no means, were kept by hundreds in damp storerooms and cold barns. The author emphasized greater effectiveness of strict criminal penalties imposed by the court against some most odious and wealthy violators than numerous and useless administrative arrests of the poor. At the same time, he called for "convincing provincial and county executive committees to trust court, so that they themselves would transfer their right to the courts, as bodies closer to the population and better understood by them" [18, p. 9].

The political line to consolidate the judicial order of deprivation of liberty was developed in the mid-twenties. According to the Criminal Code of the RSFSR of 1926, which included many articles with an administrative sanction, the appointment of imprisonment was within the powers of the court. Regulations providing for non-judicial arrest for non-payment of taxes became invalid after the introduction of the Tax Collection Regulations in 1925 [19]. It no longer allowed for administrative arrest. Non-payment of taxes entailed, as a general rule, the accrual of penalties, fines and administrative foreclosure on the debtor's property (section II).

There was no judicial authority to appoint arrests for administrative offenses, since there was no judicial procedure for considering such cases. However, necessary legal ground began to form in 1936.

Article 127 of the 1936 USSR Constitution provided citizens with a guarantee of judicial protection of their rights: no one could be arrested except by court order or with the approval of a prosecutor. The 1937 RSFSR Constitution reproduced this provision of the USSR Constitution in Article 131. At the same time, the Criminal Code of the RSFSR did not fix arrest in the list of criminal penalties. Articles 160–161 of the 1923 Criminal Procedural Code of the RSFSR, as amended in 1936, established a measure of restraint in the form of detention, not arrest. Obviously, this term was considered as a more general legal category, not exclusively related to criminal law and procedure. Thus, there emerged a common legal basis and the possibility of forming a judicial procedure for the appointment of arrest as a non-criminal, but other public legal sanction.

At the same time, the first forms of judicial intervention in administrative prosecution appeared in 1937. These are cases on the issuance of writ of execution for the compulsory collection of administrative fines, on forest violations and on collection of arrears on natural supplies with the collection of appropriate fines. The reason for the transfer of such cases to the courts was the distrust of the Council of People's Commissars to local governments as dependent on regional authorities, as well as exceedingly using their jurisdictional function in managerial interests. All three categories of cases were related only to the imposition of administrative fines. They appeared in the judicial competence within the framework of civil proceedings and did not mark the emergence of proceedings in cases of administrative offens-

es as a new procedural order. It appeared almost 20 years later and in relation to that painful category of cases where it was impossible to do without administrative arrest.

The 1920s were characterized by an incredible rampage of hooliganism in public places [20]. From the first years of the Soviet government formation, criminal liability in the form of imprisonment was introduced for hooliganism. Meanwhile, criminal legal struggle against it was complicated, first, by the ambiguity of the disposition of Article 176 of the 1922 Criminal Code of the RSFSR, since "the article avoided indicating elements of hooliganism of the act or its mischievous nature, granting the decision of the issue to the judge" [21]. Second, the article competed with administratively punishable corpus delicti. Individual hooliganism was punished administratively in accordance with local mandatory regulations. They contained more casuistic dispositions and often fixed punishments for individual hooligan actions [22].

The 1926 Criminal Code of the RSFSR criminalized hooliganism in Article 74, but the problems remained the same. Part 2 of this article established liability for repeated hooliganism, as well as consisting of "violence, outrage", as well as being distinguished by "exceptional cynicism or audacity". Meanwhile, the courts not only mitigated penalties, taking into account a possible error in qualification, but also, being unable to distinguish violent hooliganism from ordinary, switched to an unqualified corpus delicti of Part 1 [23].

By the Decree of the Presidium of the Supreme Court of August 10, 1940 "On Criminal Liability for Petty Theft at Work and for Hooliganism", criminal liability for hooliganism at enterprises and institutions was increased to a one-year prison sentence. But even this act did not have the desired effect. There was still no clear distinction between a criminally punishable act and individual manifestations of hooliganism, which could be punished in accordance with mandatory regulations.

In such legal conditions, the militia preferred mild administrative punishment for violating a mandatory decree to difficulties of initiating and investigating a criminal case. Law enforcement bodies often maintained a facade of an effective fight against crime. "Instead of bringing hooligans to criminal liability, the militia sometimes imposed administrative fines on them", wrote the auditor of the Ministry of Justice of the Ukrainian SSR [24]. In 1955, the Socialist Legality Journal cited the USSR Prosecutor's Office that hooliganism was weakly counteracted in the Karelo-Finnish SSR, "police officers are too lenient towards violators, in some cases, instead of initiating criminal prosecution, hooligans are brought to administrative liability (...) Why is this happening? Is it because some police officers, misunderstanding their tasks, artificially achieve an imaginary reduction in crime by bringing hooligans to administrative liability instead of criminal? Isn't it clear that such a method of fighting for the "reduction" of crime does nothing but harm?" [25, p. 68].

Taking into account such an overly cautious attitude of the militia towards the initiation of criminal cases, it was necessary to introduce administrative liability for hooliganism. It was more "easy-to-use" for Soviet law enforcement officers, since it was imposed in a simplified manner and did not lead to a surge in crime rates. At the same time, punishment for hooliganism, from which the law and order of the post-war Soviet republics suffered so much, clearly could not be reduced to a fine. In this regard, hooliganism should have led to arrest. And it had to be appointed only by the court, both by virtue of the Constitution, and so that it would not again turn into that "cudgel" of managerial repression, which the Soviet government barely coped with in the early years of its formation.

In 1956, imprisonment for hooliganism turned into administrative arrest, reviving this institution, and became the subject of regulation of a new procedural judicial order. On December 19, 1956, the Decree of the Presidium of the Supreme Soviet of the RSFSR "On Responsibility for Petty Hooliganism" was issued. Unqualified hooliganism, which received the name of petty hooliganism, was directly distinguished from criminally punishable acts. It now entailed arrest from 3 to 15 days, "in case these actions by their nature did not entail punishment provided for in Article 74 of the Criminal Code of the RSFSR". This document eliminated a long-term bias in legal regulations [26]. Administrative materials were considered "by the people's judge on his/her own during the day upon their receipt to the court from the militia; a person

who had committed the hooligan offense and, if necessary, witnesses were summoned to the court". The decision of the people's judge on the arrest was executed immediately and was not subject to appeal. The Resolution of the Presidium of the Supreme Soviet of the RSFSR of December 19, 1956 "On Liability for Petty Hooliganism" clarified that the use of arrest for minor hooliganism was a measure of administrative impact. After 4 years, this procedural procedure was supplemented by the institution of judicial recovery of expenses related to the ruling execution, in accordance with the Decree of the Presidium of the Supreme Soviet of the RSFSR of April 19, 1961 "On Liability for Petty Hooliganism". In case the arrested person evaded physical labor imposed by the judge's order, he/she was charged the cost of food for the time under arrest.

Judicial competence for the consideration of administrative and tort cases, appeared in 1956, was consistently expanded. It was also mainly connected with "arrest" cases. By the Degree of the Presidium of the Supreme Court of September 12, 1957 "On Liability for Petty Speculation", a judicial procedure for bringing to administrative liability for petty speculation was established. It entailed from 3 to 15 days of arrest or a fine of up to 500 rubles with confiscation of speculative items. By the Degree of the Presidium of the Supreme Court of February 15, 1962 "On Strengthening Liability for Encroachment on the Life, Health and Dignity of Police Officers and People's Vigilantes", malicious disobedience to the lawful request of a police officer and a national vigilante was punished by a judge's order with arrest for up to 15 days, a fine of up to 20 rubles, or correctional labor.

According to I.A. Galagan, the expansion of the competence of people's judges in cases of administrative offenses testified to the expansion of judicial control over administrative activities and met the requirements of strengthening socialist legality in it [27]. This expansion of judicial powers is substantiated in a similar way in modern science [28]. In short, judicial appointment of administrative arrest embodies a legal principle not so much jurisdictional as judicial.

In the Administrative Code of the RSFSR and later in the Administrative Code of the Russian Federation, appointment of such a strict administrative punishment also remains the prerogative of the court. Judicial audit of the initiative of the public administration on the application of administrative coercion measures is called judicial control. In science, it is believed that it is carried out both within the framework of administrative proceedings [29, p. 49] and proceedings in cases of administrative offenses [30].

Discussion of the legal phenomenon of judicial control most often boils down to questions about whether an administrative body should first obtain court permission to apply administrative coercion, or only the possibility of a subsequent appeal to the court of an administrative act is sufficient. The first type is called preliminary judicial control, the second – subsequent [31]. It is questionable which executive actions a bailiff can perform with the permission of the court and which ones – independently with an explanation of the right of subsequent judicial appeal [32], which investigative actions the investigator should perform independently and which ones – with the judicial sanction [33].

As a general rule, such control is considered to be subsequent. Inspectors should not wait for the judge's permission to use any coercive measures. Otherwise, the judicial power will replace the executive power, and the arsenal of powers of the latter will be too meager for the effective solution of managerial issues. As for promptness, in favor of subsequent judicial control, when resorting to the procedure of giving judicial sanction can negate effectiveness of the requested emergency measure. Finally, administrative bodies, having a narrower specialization than the courts, are often more competent. B.V. Rossinskii states significant overload of the judicial system. According to the authoritative scientist, there are many examples where decisions on administrative offenses made by officials are better reasoned and justified [34].

Preliminary judicial control is rather an exception. But it is necessary to resort to it when the preservation of the administrative coercion measure among prerogatives of the executive power threatens the risk of irreparable violation of the fundamental rights and freedoms of citizens. Most often, this happens when public administration bodies show an intention to interfere most deeply in the rights of individuals for managerial purposes. It is wiretapping, search, seizure of property, foreclosure on residential premises and, finally, restriction of personal

freedom. In such a situation, the interests of the public authority should lose the status of the main criterion for solving a management issue. Instead, they should be on the same scale as the personal interests of a citizen. Both values should be reasonably balanced by an independent jurisdictional body. It is obliged to appeal only to law and justice.

In 1997, the Constitutional Court of the Russian Federation raised the issue of preliminary judicial control of the administrative punishment measure to consider compliance of paragraphs 4 and 6 of articles 242 and 280 of the Labor Code of the Russian Federation with the Constitution of the Russian Federation. These provisions gave the Customs authorities the right to carry out extrajudicial confiscation of goods and vehicles. First, the Resolution No. 8-P of May 20, 1997 in the case of checking the constitutionality of paragraphs 4 and 6 of Article 242 and Article 280 of the Customs Code of the Russian Federation stated that the law, if there was a guarantee of subsequent judicial control as a way to protect the rights of the owner, did not contradict the Constitution of the Russian Federation. However, in 1998, administrative confiscation became the subject of verification by the Constitutional Court of the Russian Federation again. The Resolution No. 8-P of March 11, 1998 in the case of checking the constitutionality of Article 266 of the Customs Code of the Russian Federation, Part 2 of Article 85 and Article 222 of the RSFSR Code of Administrative Offences in connection with complaints from citizens M.M. Gagloeva and A.B. Pestryakov considered an episode related to the confiscation of a rifle belonging to a citizen by the body overseeing compliance with hunting rules under articles 85 and 222 of the Administrative Code of the RSFSR. A slightly different conclusion was formulated. The possibility of judicial appeal alone did not exclude deprivation of property without a court decision. At the time of seizure, neither the act itself nor the culprit of its commission could be considered established. These circumstances required subsequent consideration and proof in a due judicial process. Soon, confiscation within the framework of the Administrative Code also became a judicial prerogative.

To the greatest extent, preliminary judicial control is required in cases involving administrative arrest. Public authorities are interested in the powers to restrict freedom of a citizen, in order to fulfill their assigned public legal duties, which is understandable. However, there should be an unreasonable barrier in front of an inspector in the form of the need for a reasoned appeal to the court. Days of lost freedom, which is, along with life and health, the greatest value, cannot be returned. Even monetary compensation here will be nothing more than a kind of palliative. Of interest are cases where the subject of review by the Supreme Court of the Russian Federation was judges' decisions in "arrest" cases, mitigating the punishment imposed by lower courts from the arrest served to a fine. Such decisions were canceled on the grounds of violation of Part 5 of Article 4.1 of the Administrative Code of the Russian Federation, according to which no one can be held responsible twice for one offense. Since the arrest has already been served, such a commutation of punishment essentially entails, on the contrary, a deterioration in the situation of the person involved.

The author of the article backs the idea that judicial interference in administrative jurisdiction should not spread excessively, turning into intrusive guardianship. At the same time, direct judicial review of administrative offense cases is also objectively necessary, first of all, in cases related to the restriction of personal freedom.

Conclusion

The main function of the executive branch, which includes law enforcement agencies, is public administration, including state control. This involves solving a significant number of large-scale problems, such as mobilizing population to fulfill certain tasks set by the government, collecting taxes, and ensuring public order. A rich arsenal of administrative enforcement measures available to the executive branch becomes a resource of public administration. Administrative jurisdiction entrusted to the public administration is put at the service of public administration with appropriate prioritizing: the priority of the fiscal function over the welfare of a private person, the preference for general prevention rather than individualization of punishment, the importance of ensuring the manageability and control of the population in comparison with personal freedom and private interests, etc. This situation is normal, but also determines the importance of judicial control.

At the same time, since management issues require prompt solutions that do not involve unnecessary formalities, judicial control is usually subsequent.

However, managing the life of a country is an extremely time-consuming and sometimes risky business. In this regard, public authorities are interested in the authority to interfere as deeply as possible in the freedom of a citizen, solving managerial issues as effectively as possible. But even here, limiting the role of the court by subsequent control will lead to the fact that it will no longer be able to make up for the right allowed by the repressive initiative. Therefore, where unlawful imposition of administrative punishment, dictated by managerial goals, will entail the most obvious or irreparable violation of the rights of a citizen, judicial control should be preliminary. It should be carried out by examining the case of an administrative offense by a judge.

Appointment of administrative arrest is the most striking example. It is reasonably excluded from the powerful resource of administrative enforcement measures available to the executive branch. Providing only the possibility of a subsequent judicial appeal here will not ensure restoration of the violated rights if the decision turns out to be illegal and does not discipline the prosecution authorities. In our opinion, this criterion should be the main one when deciding on the issue of jurisdiction.

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INFORMATION ABOUT THE AUTHOR

STANISLAV V. SHCHEPALOV – Candidate of Sciences (Law), Associate Professor, Judge of the Supreme Court of the Republic of Karelia, Petrozavodsk, Russia, schepalov@mail.ru, https://orcid.org/0009-0004-8835-247X

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Psychological Criteria of Convict Correction: Development Possibilities and Implementation Problems

GRIGORII V. SHCHERBAKOV
Federal State Institution Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia, gregoralt@yandex.ru, https://orcid.org/0000-0001-5997-8028

ALEKSANDR N. BALAMUT
Federal State Institution Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia, balamut01@yandex.ru, https://orcid.org/0000-0002-0841-676X

SVETLANA G. KRYAZHEVA
Federal State Institution Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia, kryazheva_sg@mail.ru, https://orcid.org/0000-0002-2246-3255

Abstract

Introduction: the article presents a theoretical analysis of the available scientific developments on the relevance of applying psychological criteria of convict correction. *Purpose*: on the basis of theoretical analysis of scientific literature and earlier studies to systematize psychological criteria of correction of convicts and to further analyze the problem of their implementation. *Methods*: during the study of psychological criteria of correction of convicts, methods of theoretical research (analytical, axiomatic, formalization, etc.), as well as analysis of scientific sources, are used. *Results*: theoretical and methodological analysis of scientific developments on the relevance of applying psychological criteria of convict correction is carried out. *Conclusion*: at present the problem of development and application of psychological criteria for assessing the degree of correction of convicts is one of the most urgent in penitentiary science. They should be as accurate as possible and take into account not only positive behavior of the convict, but also a set of other factors that complement the general characteristic of his/her personality, such as presence of socially useful ties, living conditions after release, employment, etc. The authors emphasize the increasing role of psychological measures (taking into account scientifically based psychological criteria for assessing correction of convicts) in cooperation with various departments and

services of the correctional institution, public and other social institutions and organizations. In this regard, psychological criteria of convict correction serve as a kind of indicators (markers) that contribute to a more complete understanding of the convict's personality and a targeted response of the assisting specialist using psychological and pedagogical measures of influence in pre-penitentiary, penitentiary and post-penitentiary periods.

Keywords: psychological criteria of correction; correctional institutions; convicts; resocialization; penitentiary system; penal system.

5.3.9. Legal psychology and accident psychology.

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Introduction

Scientists have been long trying to develop convict correction criteria, i.e. indicators showing that convicts are corrected and do not pose public danger after release from a correctional institution. The ability to correctly assess the degree of correction of a convicted person in the process of serving a sentence includes identifying positive or negative dynamics of personality change. A correct assessment will allow employees to more purposefully conduct individual and group correctional and educational programs for convict rehabilitation [1].

The problem of studying convict correction criteria is interdisciplinary and is the focus of interest of many sciences (legal, psychological, pedagogical, sociological, etc.). Various aspects of the issue to assess the convict correction degree are covered by scientists, such as S.B. Poznyshev, N.A. Struchkov, M.P. Sturova, F.R. Sundurov, V.D. Filimonov, I.V. Shmarov, Yu.M. Antonyan, O.G. Anan'ev, G.P. Baidakov, N.P. Barabanov, Yu.V. Golik, A.Ya. Grishko, V.A. Eleonskii, M.A. Efimov, B.B. Kazak, A.N. Kuz'min, V.M. Litvishkov, M.P. Melent'ev, T.F. Minyazeva, M.G Debol'skii, V.M. Pozdnyakov, S.N. Ponomarev, A.A. Sinichkin, V.E. Yuzhanin and others. At the same time, interpretation of the key concept of "correction" in scientific sources is ambiguous, and the main attention is focused on social and pedagogical indicators (for example, participation in mass events, maintaining social ties, awareness of guilt, disciplinary practice, etc.), while much less attention is paid to the psychological component of the correction process (personality change). However, legislation is constantly being improved, and the state, represented by the penitentiary system, is searching for new approaches to assessing the degree of convict correction.

Considering the concept of psychological criteria of convict correction, we should mention that the term "criterion" in psychology is considered as a standard on the basis of which the definition, assessment or classification of any psychological phenomena is carried out [2, p. 201].

The category of "correction" in A. Reber's Large Explanatory Psychological Dictionary is explained through socio-criminological terms that characterize the change in an individual's behavior in order to bring it into line with social norms. In this regard, the correctional facility and prison are often called correctional institutions [3, p. 331].

The Russian penitentiary scientist V. M. Pozdnyakov emphasizes the need for a retrospective analysis of the transformation of value-semantic orientations in relation to the content-psychological aspects of the phenomenon of "correcting the personality of a criminal" and the use of appropriate methods of influencing convicts, which generally contributes to a more adequate understanding of the current state and trends in approaches to correcting convicts in the process of punishment execution [4, p. 40].

Research

The relevance of the development and systematization of psychological criteria of convict correction has been studied for a number of

years. These studies have been conducted at the request of the Department of Educational, Social, and Psychological Activities by the Federal State Institution Research Institute of the Federal Penitentiary Service of Russia and interregional psychological work departments (hereinafter – IPWD), namely: IPWD of the Main Directorate of the Federal Penitentiary System in the Sverdlovsk Oblast, IPWD of the Main Directorate of the Federal Penitentiary System in Krasnoyarsk Krai, and IPWD of the Main Directorate of the Federal Penitentiary System in the Rostov Oblast. We will give a brief description of the research conducted, the capacities and opportunities available, as well as problems of their implementation.

In 2011, the staff of the Federal State Institution Research Institute of the Federal Penitentiary Service of Russia prepared a research paper on the topic "Development of psychological criteria for evaluating correction of convicts in the context of implementing a "social lift" system. This work presented criteria for "social lifts", divided into criteria of a social nature, criteria of an educational and pedagogical nature and psychological criteria. Psychological criteria included primary psychodiagnostic criteria (socio-psychological criteria, test results, activity of the convict's participation in testing), active participation in psychological trainings, final psychodiagnostic criteria for submission to the commission for assessing convicts' behavior and determining conditions of serving a sentence. Further, during implementation of the "social lift" system in penal institutions, the criteria were modified, reduced and presented in the following form: compliance with the order of serving a sentence; convict's desire for psychophysical correction of his/her personality and proactive measures for re-socialization; other events and actions indicating an active positive position of the convicted person. Despite the fact that the "social lift" system is not currently being implemented in penal institutions, it contains the idea of assessing the degree of convict correction in the process of serving their sentences.

In 2018, employees of the IPWD of the Main Directorate of the Federal Penitentiary System in the Sverdlovsk Oblast prepared methodological recommendations "Psychological Diagnostics of Propensity to Criminal Behavior in Suspected, Accused, Convicted Persons (Risk Markers)". The recommendations were prepared based on results of the empirical study of the propensity to criminal behavior. The sample consisted of two groups (employees and convicts). The study itself was based on the assumption that, in personal terms, criminal behavior is associated with a decrease in indicators of the following spheres of personality (moral sphere, intellectual sphere, emotional and volitional sphere). For their detailed study, the need for a combination of diagnostic techniques developed in line with objective, subjective and projective psychodiagnostic approaches was identified, which made it possible to determine psychodiagnostic tools. The results of the study made it possible to identify key and additional risk markers of criminal behavior with a detailed description of the methods aimed at studying them. With the exception of the Main Directorate of the Federal Penitentiary System in the Sverdlovsk Oblast, these methodological recommendations have not been further implemented.

In 2019, employees of the IPWD of the Main Directorate of the Federal Penitentiary System in Krasnoyarsk Krai, and the IPWD of the Main Directorate of the Federal Penitentiary System in the Rostov Oblast and the Federal State Institution Research Institute of the Federal Penitentiary Service of Russia prepared research papers on the topic: "Scientifically based psychological criteria of the convict correction degree".

The author's team of the IPWD of the Main Directorate of the Federal Penitentiary System in Krasnoyarsk Krai concluded that when developing psychological criteria of the convict correction degree, it was necessary to take into account that the main task of the penal system activities is social adaptation and re-socialization of convicts. At the same time, when assessing convict correction, it is important to take into account not only his/her behavior within the correctional institution, but also his/her willingness to return to society. Thus, the following criteria were highlighted:

1. Behavioral criteria:

– participation in psychological activities, desire to correct negative personal and behavioral traits;

– compliance with the daily routine established in a correctional facility, pre-trial detention center, absence of penalties;

– polite communication with the administration of a correctional facility or a pre-trial detention center, unconditional fulfillment of legal requirements;

– non-acceptance of the criminal subculture: exclusion of the use of slang words, obscene expressions, nicknames, rejection of criminal rules of conduct, customs, traditions accepted in the criminal environment;

– active participation in educational and professional development activities, including self-education, reading periodicals, books, visiting the library;

– active participation in sports and cultural events held at the institution;

– obtaining a new profession in demand on the labor market, employment (if there are vacancies) at a correctional facility, a pre-trial detention center;

– concrete actions to preserve socially useful connections, find work before release, and have real plans for life at large;

– voluntary early repayment of material damage, desire to resolve the issue of employment and household arrangements in advance after release;

– restoration of socially useful ties, family ties;

– absence of protest actions against the legitimate demands of the administration of a correctional institution or a pre-trial detention center.

2. Psychological criteria:

– absence of sexual preference violations in the form of pedophilia among those convicted of crimes against sexual freedom and sexual integrity of the individual;

– decrease in the level of aggressiveness in convicts according to psychodiagnostic examinations;

– development of the ability to plan one's future independently;

– completion of specialized psychocorrection programs (classes) aimed at reducing recidivism;

– motivational focus on law-abiding behavior;

– taking care of one's spiritual and physical development;

– convict's desire to psychophysical correction of his/her personality;

– reconsideration of the committed crime, admission of guilt in the committed crime (compensation for damage caused by the crime, writing an apology letter);

– having clear (specified) plans for the future, the ability to cope with life problems.

3. Awareness of guilt in the crime committed as one of the main criteria of correction and resocialization of convicts.

4. Motivational focus on law-abiding behavior or motivation for self-correction.

5. Attitude to work, education, social work, cultural events, the team of a squad or facility, etc.

6. Compensation for material damage.

According to authors of the research work, correction criteria should take into account not only external positive behavior of the convicted person, but also the assessment of specific defects in his general and legal socialization, the state of social ties of the individual, moral self-manifestation of the personality in interpersonal relations, etc.

Besides, in 2019, employees of the IPWD of the Main Directorate of the Federal Penitentiary System in the Rostov Oblast prepared a research paper to substantiate psychological criteria of the convict correction degree. Based on the data provided by psychological services of the territorial bodies of the Federal Penitentiary Service in the Southern Federal District, they identified the following psychological criteria:

– presence of convict's motivation to law-abiding behavior;

– low level of criminal infection, negative attitude towards criminal subculture;

– motivation to undergo rehabilitation of people suffering from alcohol or drug addiction;

– adequacy of self-assessment;

– desire for self-improvement, raising the intellectual level, training, obtaining a profession and specialty;

– desire for psychological correction of his/her personality (active participation in psychological corrective work);

– presence of a positive system of value orientations, formation of positive goals, plans, and life prospects;

– reducing the level of conflict, aggressiveness;

– preservation or restoration of socially useful connections;

– high level of self-control and neuropsychic stability.

Having considered the criteria obtained, the author's team of the IPWD of the Main Directorate of the Federal Penitentiary System in the Rostov Oblast conditionally divided them into the following groups:

1. Integrative psychological criterion, correction of the convict's personality, "mental (psychological) health".

2. "Attitude to social norms and criminal subculture acceptance degree".

3. "Socio-psychological adaptation".

4. "Repentance and awareness of the just punishment".

In addition, based on the classification of I.V. Shmarov, the selected criteria were divided according to the correction degree: embarked on the path of correction, firmly embarked on the path of correction, proved his/her correction, i.e. in the process of serving his/her sentence, a convict has acquired sufficiently stable skills and habits of social behavior [5, pp. 33–35].

The problem of scientific substantiation of psychological criteria of the convict correction degree is reflected in scientific works of the Federal State Institution Research Institute of the Federal Penitentiary Service of Russia. In 2019, the Institute prepared a research paper on the topic: "Scientifically based psychological criteria of the convict correction degree". It presented a detailed theoretical analysis of the scientific literature on the subject under consideration and psychological criteria of the convict correction degree. In the course of the study, psychological criteria were combined according to common characteristics into the following groups:

1. Behavior in a correctional facility.

2. State of health.

3. Presence of socially useful ties.

4. Living conditions after release.

5. Criminological portrait of a convict.

6. Relations with the penal facility administration.

7. Relations with convicts in the correctional facility.

8. Profession/self-maintenance.

9. Participation in activities of the facility.

10. Relationship with a victim.

These groups contain similar criteria that characterize certain aspects of psychological and behavioral manifestations of convicts in a correctional facility. The authors proposed to additionally assess each of the presented qualities according to the degree of severity, using a 3-point assessment system from "the quality is not expressed" to "the quality is formed". Besides, these criteria serve as guidelines that set the vector for organizing educational, psychological and other measures aimed at correcting convicts and increasing effectiveness of the measures taken.

In 2020, scientific sources on the problem of scientifically based criteria of the convict correction degree were analyzed to implement Paragraph 3.3. of the Program for the Development of the Educational, Social and Psychological Services of the Federal Penitentiary Service for 2020–2022, approved by the Director of the Federal Penitentiary Service, to improve the procedure for providing characterizing materials for parole or commutation.

The work done made it possible to identify a number of significant points to be taken into account when developing convict correction criteria.

First, the assessment of the convict correction degree carried out by correctional officers will have a number of limitations in terms of its prognostic potential. These restrictions are due to the fact that "manifestations" of convicts, on the basis of which the assessment will be carried out, occur in isolation. As noted by a number of penitentiary scientists, positive behavior of convicts in places of detention does not always indicate their correction. Such behavior is likely to reflect their adaptation to the conditions and requirements of correctional facilities (Yu.M. Antonyan, Yu.V. Baranov, V.M. Pozdnyakov, etc.).

Second, nowadays there are no scientifically confirmed data indicating the paramount importance of one or another criterion for assessing the convict correction degree. It is difficult to determine the level of importance, for example, of such criteria traditionally highlighted by scientists and practitioners as having a family, profession, satisfactory living conditions, etc.,

in forecasting the conduct of a law-abiding lifestyle after release.

Third, it is a commission that should assess the convict correction degree. It should include employees who know the convicted person, have interacted with him, and can give a more complete and objective description of him. Attracting employees who are not familiar with convicts to the assessment shows a formal approach to it

Summarizing scientific information and suggestions of penal system employees, we can propose the following convict correction criteria with predictors detailing them:

1. Attitude to the committed crime.

1.1. A convict has admitted guilt.

1.2. A convict has repented of the crime committed.

1.3. A convict compensates for the damage caused to victims.

1.4. A convict condemns his/her criminal behavior.

2. Attitude to the regime and compliance with the requirements.

2.1. A convict follows requirements of the correctional institution.

2.2. A convict refuses criminal subculture.

2.3. A convict violates the established procedure for serving a sentence.

3. Attitude to work.

3.1. A convict is employed in a correctional institution.

3.2. A convict takes part in the improvement of the correctional institution.

3.2. A convict obtains a profession while serving a sentence.

4. Group relations.

4.1. A convict is polite when communicating with other convicts.

4.2. A convict has no conflicts with other convicts.

4.3. A convict is polite when communicating with employees.

4.4. A convict has no conflicts with employees.

5. Family relations.

5.1. A convict has a family.

5.2. A convict has useful social ties.

5.3. A convict has relationship with the family.

5.4. There is a positive influence of the family.

6. Individual and personal characteristics.

6.1. Ability to self-regulate one's emotional state and behavior.

6.2. Conflict level.

6.3. Aggressiveness level.

6.4. Selfishness.

6.5. Altruism.

6.6. Responsibility level.

6.7. Cynicism.

It should be noted that the highlighted list of criteria is not exhaustive and can be supplemented depending on current requirements of the society. The same applies to predictors detailing each of the criteria. In addition to the criteria, an algorithm for evaluating them was proposed, involving the calculation of points. At the same time, during further testing of psychological criteria of convict correction, we found out issues that do not allow to fully characterize the convict's personality according to the proposed criteria. It was also noted that when finalizing the criteria taking into account the identified problematic issues, as well as when working on the issue of automatic scoring, the use of the developed system in practice as a recommendation to members of the correctional institution commission will improve its efficiency and will serve as an additional incentive for convicts in terms of active participation in public life, taking measures to repayment of claims, etc.

Conclusion

In conclusion, we would like to note that correction criteria should take into account not only positive behavior of the convicted person, but also results of a comprehensive assessment of specific defects in his/her general socialization, legal socialization, restoration of disrupted social ties, focus on his/her socially positive mental activity, and formation of a socially positive attitude, taking into account the current and long-term goal-setting based on the restoration of socially supportive relationships; spiritual and moral self-manifestation of a personality in interpersonal relationships. The demonstrated positive behavior of a convicted person in places of deprivation of liberty may not always directly indicate the persistence of such behavior after release due to drastic

changes in human living conditions, for which he/she may not be ready[1].

The evolution of recidivism, as well as crime in general, is determined by socio-economic factors and is enhanced by criminal orientation of personal characteristics, which contribute to a broader understanding of the conditions for committing crimes as favorable. To a large extent, this understanding is formed due to the discrepancy between the level of punishment and the effectiveness of correctional and implementation activities of society (public institutions) and law enforcement agencies. As noted by V.I. Terekhin and V.V. Chernyshov, the term of imprisonment and its severity have the opposite effect on recidivism prospects (probability). Being severely punished for a previous crime, convicts reject recidivism afraid of possible significant material and social losses due to the rupture of previously existing socially useful ties. Being isolated from society, they get used to the regime of penitentiary institutions. They find it difficult to adapt to life in society after release and provide themselves with decent living conditions. Risk reduction is determined by accumulated criminal experience, acceptability of imprisonment conditions, and rejection of work and taking on all the worries about life. According to the position of these authors, referring to the economic theory of crime formulated by G. Becker, modern realities are such that crimes are currently considered as an analogue of a high-risk business. This approach assumes that people act rationally, focusing in their behavior on benefits and costs, taking into account all the ethical, mental and other aspects that determine their behavior [6].

We share M.G. Debolskii's point of view that the main paradigm of Russian penitentiary science and practice in the case of parole of convicts is the definition of correction criteria. At the same time, when assessing the convict correction degree, it is important to take into account not only his/her behavior within the correctional institution, but also his/her willingness to live in the society. The difference in the scientific paradigm of most foreign countries lies in determining risk factors of criminal behavior (recidivism). From the standpoint of the humanistic approach, the domestic paradigm is more preferable, since it is focused on the principle of correctability and faith in potential possibilities of personal development. At the same time, it is idealized, since, despite the fact that a person behaved positively in places of detention and repented of what he/she had done, he/she may commit a new crime due to unfavorable living conditions. The concept of assessing recidivism risks is more pragmatic than the concept of assessing indicators of the correctability of the convict's personality when forecasting human behavior after release [7]. All this is important to be taken into account when forecasting risks of committing repeated crimes by persons released from prison, seeking to adapt to society, lead a healthy and law-abiding lifestyle in new realities of the modern information environment.

Thus, it is necessary to note the ever-increasing role of psychological measures (taking into account scientifically based psychological criteria for evaluating correction of convicts) in cooperation with various departments and services of the correctional institution, public and other social institutions and organizations. This approach to the problem under consideration contributes not only to correction of convicts, but also to their effective re-socialization, which, in turn, allows to implement high-quality preventive measures with regard to a set of factors (personal characteristics, social support, education, formation of work skills, etc.), which ultimately affect successful social adaptation.

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INFORMATION ABOUT THE AUTHORS

GRIGORII V. SHCHERBAKOV – Candidate of Sciences (Psychology), Associate Professor, Head of the Federal State Institution Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia, gregoralt@yandex.ru, https://orcid.org/0000-0001-5997-8028
ALEKSANDR N. BALAMUT – Candidate of Sciences (Psychology), Associate Professor, Head of the Research Center-2 of the Federal State Institution Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia, balamut01@yandex.ru, https://orcid.org/0000-0002-0841-676X
SVETLANA G. KRYAZHEVA – Senior Researcher at the Research Center-2 of the Federal State Institution Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia, kryazheva_sg@mail.ru, https://orcid.org/0000-0002-2246-3255

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Attitude of Convicts Addicted to Alcohol to Their Family

EL'VIRA V. ZAUTOROVA
Vologda Institute of Law and Economics of the Federal Penitentiary Service, Vologda, Russia
Federal State Institution Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia
elvira-song@mail.ru, https://orcid.org/0000-0002-1334-2654

Abstract

Introduction: the article considers the attitude of convicts addicted to alcohol to their family. This category of convicts is a special group in a penitentiary institution, since their individual psychological characteristics are often disharmonious. Therefore, it is important to study the nature of the interaction of these persons with other convicts, employees of institutions, as well as with their loved ones and family. *Purpose*: to identify the specifics of attitude to the family of convicts with alcohol dependence. *Methods*: theoretical analysis of literature; method of generalization and comparison; psychodiagnostic techniques ("Family Environment Scale" by S.Yu. Kupriyanov and "Family Drawing" by G.V. Huels). *Results*: it is revealed that convicts with addiction have mental changes with manifestation of strong emotions as a result of withdrawal from reality, which manifests itself in destructive behavior. This category of convicts is not focused on changing their personality, they have no plans for self-education, there is no motivation to predict their future. A lack of self-control, violations of constructive communication and low self-esteem contribute to negative relationships in the family, manifested in a lack of self-esteem, violation of the emotional sphere and causes difficulties in maintaining long-term and trusting relationships. *Conclusion*: it is the family that has a strong impact on the convict's personality and can contribute either to correction or promote antisocial criminal behavior. Convicts with alcohol dependence find it difficult to openly express their emotions and are characterized by conflict and depressive manifestations, unyielding moral views, etc. To work with this category of persons, it is advisable to use specially developed psychological and pedagogical programs aimed at correcting the distorted family values of the convict, developing skills of perceiving information and forming skills of establishing psychological contact. The main tasks of correctional work will be to develop a sense of respect and acceptance of family members, to form a responsible attitude to family ties and obligations, as well as understanding the need for family and planning future family relationships to prevent recidivism and establish socially useful connections with close people and relatives who are waiting for them at large.

Keywords: penitentiary institutions, convicts, convicts addicted to alcohol, family, family relations, interaction in the family, correctional work of a psychologist.

5.3.9. Legal psychology and accident psychology.

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Introduction

In Russia, the problem of alcoholism as uncontrolled alcohol consumption and dependence on it is an important task that needs to be resolved, since alcohol not only destroys human health, but also affects his/her family relationships and the work quality [1]. According to the World Health Organization, Russia occupies one of the first places in the world in terms of alcohol consumption per capita. According to experts, the percentage of alcoholics in Russia is steadily growing (approximately 600 thousand divorces, of which 40% are related to drunkenness of the husband or wife; in addition, alcohol is a cause or risk factor for more than 50% of cases of domestic violence). In this regard, alcoholism is not just a personal problem of a person, but a nationwide problem that requires a comprehensive and effective solution [2].

An increase in the number of alcohol-dependent persons has a significant impact on the crime rate in the country: every fourth crime (28.2%) was committed while intoxicated [3]. In this regard, a large number of convicts addicted to alcohol dependence are held in penitentiary institutions. This category of convicts is a special group in a penitentiary institution, since their individual psychological characteristics are often disharmonious. Alcohol addicts require constant psychological supervision. An adequate strategy for psychological correctional measures focused on solving and preventing interpersonal conflicts is necessary. Therefore, it is crucial to study the specifics of their relationship with other convicts, employees of institutions, and their family.

Being in a difficult life situation, the family of a person deprived of liberty experiences difficulties, which interfere with normal activities of its members. exceeding conventional adaptive capacity, this family requires considerable psychological and material resources to overcome these challenges and obstacles. A sudden crisis even leads to the misbalance of a family system and requires adaptation to a new reality.

Coverage of the studied problem in the scientific literature

In Russian pedagogy and psychology, the phenomenon of the family was studied by such scientists as Yu.M. Antonyan [4], A.A. Bodalev [5], T.S. Drabkina [6], A.Ya. Varga [6], T.P. Deusova [7], V.L. Levi [8], A.N. Leont'ev [9], A.S. Makarenko [10], V.V. Stolin [5], K.D. Ushinskii [11] and others. These authors developed theoretical and practical approaches to the study of family-parent relations, described key mechanisms, the general structure and features of the domestic family system. Foreign scientists J. Brown and D. Kristknsen [12], V. Satyr [13], J. Haley [14], L.B. Schneider [15], M. Erickson [14] introduced the concept of a family system and described patterns of the institution of the family.

Scientists note that the family is one of the most important components of our lives, the foundation of society and the place where values, attitudes and behavior are formed. The role of the family especially increases during the serving of a criminal sentence, as it helps overcome a stressful life situation.

At the same time, the causes of criminal behavior of a person may also form in the family [16]. Family members, by their attitude to the criminal act committed by the convicted person, can express their inherent social position (approval, condemnation, tacit consent, active protest, provocation, involvement in criminal activity, etc.). It is the family that has a strong impact on the personality of the convicted person and can contribute either to correction or, conversely, encourage him/her to antisocial criminal behavior.

When considering relations between alcohol addicts and their families, it is important to know individual characteristics of these people. So, a valuable contribution to the study of this problem is made by B.S. Bratus' [17], I.M. Gryaznov [18], V. Zeigarnik [19], Ts.P. Korolenko [20], A.E. Lichko [21], V.V. Marilov [22] and others. Scientists note psychological characteristics of the personality of alcohol addicts,

such as moral immaturity, pronounced infantilism, extreme selfishness and individualism, affective thinking, decreased sense of criticism, complacency, overestimated self-esteem, decreased self-criticism, tendency to self-deception, irresponsibility to oneself and loved ones, unreliability, extreme resourcefulness bordering on falsehood and irresponsible fantasy, and weakening of reflection.

Organization of research on the study of family-parental relations of convicts with alcohol dependence

The study was conducted on the basis of the correctional facility No. 12 of the Directorate of the FPS of Russia in the Vologda Oblast. The empirical study covered convicts with alcohol dependence (150 men). S.Yu. Kupriyanov's psychodiagnostic technique "Family Environment Scale" was chosen for the study (10 scales: team spirit, expressiveness, conflict, independence, moral aspect, organization, control; a total of 90 questions [23]). The results are presented in Table 1.

Table 1

Study results obtained with the help of S.Yu. Kupriyanov's method "Family Environment Scale"

Scale	Average values
Team spirit	6.2
Expressiveness	5.1
Conflict	6.4
Independence	4.3
Performance orientation	5.0
Intellectual and cultural orientation	4.8
Active recreation orientation	4.9
Moral aspect	4.6
Organization	5.6
Control	3.6

The data indicate that convicts with alcohol dependence cannot express their feelings and emotions openly and suppress them when communicating with the loved ones ("Expressiveness" scale). Alcohol may help them to experience what they lack in their family and compensate for the missing interpersonal communication and contacts; all this leads to the formation of biological and psychological dependence on alcohol.

These tables also indicate that people with alcohol dependence often become participants in conflict relationships in the family ("Conflict" scale). At the same time, being in conflict family situations, a person, as a rule, has low self-esteem, demonstrates insecurity and a tendency to depressive states. It can also be expressed in aggression and cruelty, deterioration of relationships with others and eventually lead to the commission of illegal acts. These individuals find it more difficult to assimilate moral and general cultural values.

The study results also demonstrate that alcohol addicts have low values on the "Independence" and "Control" scales. This may indicate that these respondents have low-level characterological features, such as the desire for self-affirmation, behavior control, independence in decision-making, severity of the hierarchy of the family organization and the degree of interest of family members to each other.

Convicts with alcohol dependence are characterized by the absence of social interests, infantilism and a low level of stress tolerance. Their worldview is narrow and focused only on obtaining a dependence object. Convicts of this category find it difficult to establish communication links and are afraid of stable relationships, therefore they formally fulfill those social roles that are imposed on them. At the same time, external sociability of addictive personalities is a manifestation of manipulative behavior with unstable and superficial emotional connections characteristic of them.

Besides, we used the method of V. Huels "Family Drawing" [24], developed in 1951 and designed to identify features of intra-family relations (attitude to family members, perception of their role in the family, characteristics of relationships that cause anxious and conflicted feelings). The surveyed is given instructions, a standard sheet of paper, pencils and an eraser. The sequence of drawing family members and their occupation, spatial location, image quality, etc. are analyzed. The results are presented in Table 2.

Table 2

Study results obtained using the method of V. Huels "Family Drawing"

Feature	Interpretation	Number of convicts indicated this feature (%)
Image of a complete family	Favorable family situation	72
Image of a single-parent family	Unfavorable family situation	28
Absence of the author	Feeling of insecurity, rejection	24
Close proximity of family members	Close ties, need for emotional intimacy	68
Distance between family members (family members are distant)	Separation, weakness of emotional contacts	32
Distance between family members (the author is isolated)	Degree of trust	12
Drawing accuracy degree (head, hands)	Good mood, relaxed, lack of tension	28
Type of image (decorating clothes)	Favorable relationships, plenty of attention	28
Use of bright colors	Presence of positive emotions	0
Large size of the figures depicted	High importance of the depicted object	28
Central location of people in the drawing	Adequate level of self-esteem	52
Presence of other elements (nature, animals, houses)	Lack of communication, warm relationships	56

According to the study results obtained using the "Family Drawing" method, 24% of the convicts with alcohol dependence lack a sense of community with their family, are rejected by family members, and lack emotional contact with relatives. The location of family members in the drawings also indicates psychological characteristics of their relationship. Thus, most respondents have close proximity to family members. This is probably due to the fact that, being in isolation, convicts begin to appreciate emotional contacts with their relatives. In 12% of the cases, the author is depicted in the drawings in isolation from other family members, which indicates a low degree of trust.

Also, 28% of the convicts with alcohol dependence have elements of clothing decoration in their drawings, which indicates insufficiently favorable family relations and affluence of attention from relatives. In the majority of the convicts' drawings, all family members are not located in the central part of the sheet, which indicates an insufficiently stable self-esteem. Drawing nature, animals, houses and other additions may indicate an attempt to fill the void, compensate for the lack of close, warm relationships, and emotional connections. These details are presented in most drawings.

Results

The study results show that convicts with addiction have mental changes with manifestation of strong emotions as a result of withdrawal from reality, which manifests itself in destructive behavior. This category of convicts is not focused on changing their personality, they have no plans for self-education, no motivation to predict their future. A lack of self-control, violations of constructive communication and low self-esteem contribute to negative relationships in the family, manifested in a lack of self-esteem and violation of the emotional sphere, and causes difficulties in maintaining long-term and trusting relationships.

To work with this category of persons, it is advisable to use specially developed psychological and pedagogical programs aimed at correcting distorted family values of the convict, developing skills to perceive information and forming skills to establish psychological contact (sample topics for program development: "Family is the basic value of society", "Social adaptation of personality", "Development and formation of family values", "Family is the seven selves", etc.).

Conclusion

Alcohol consumption is a serious problem of modern society, as it has a negative impact not only on human health, but also on an increase in the crime rate in the country. Therefore, employees of penitentiary institutions need to pay attention to convicts with alcohol dependence, who are characterized by mood swings, depressive manifestations, unyielding moral views, etc.

Studying the specifics of relations between these convicts and their families, it is revealed that they have a negative character of communication with loved ones, which causes difficulties in maintaining long-term and trusting relationships. Crucial tasks of correctional work will be formation of respect for family members and a responsible attitude to family ties and obligations and inoculation of the need for family and planning future family relationships in order to prevent recidivism and establish socially useful ties with relatives who are waiting for them at large.

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INFORMATION ABOUT THE AUTHOR

EL'VIRA V. ZAUTOROVA – Doctor of Sciences (Pedagogy), Professor, professor at the Department of Legal Psychology and Pedagogy of the Vologda Institute of Law and Economics of the Federal Penitentiary Service, Vologda, Russia, Leading Researcher at the Federal State Institution Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia, Corresponding Member of the International Academy of Sciences of Pedagogical Education, elvira-song@mail.ru, https://orcid.org/0000-0002-1334-2654

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Ideas of Russian Penal System Employees about the Official Behavior Pattern Forming a Humane Attitude towards Convicts

OLEG M. PISAREV
Tomsk Institute for Advanced Training of Employees of the Federal Penitentiary Service, Tomsk, Russia, ti.okspvr@mail.ru, https://orcid.org/0000-0002-3559-6524

Abstract

Introduction: issues related to certain aspects of the professional activities of personnel of institutions and bodies executing criminal penalties in the context of the progressive process of humanization of the domestic penitentiary system are relevant. Features of the staff's official activities when organizing the correctional process in places of detention are analyzed from a psychological point of view. *Purpose*: to identify the subjective component of professional activity through concretization of the ideas and views of penal system employees about humane treatment of convicts, followed by the choice of a socially approved pattern of official behavior. *Methods*: the author applied a psychological verbal and communicative method and used an author's questionnaire specially developed for the purpose of the study. The study covered current penal system employees and public monitoring commission members (n=150, 3 focus groups). *Results*: attention is focused on the subjective side of the performance of official tasks by employees, which is based on existing functional behaviors, specifics of perception of situations in the process of exerting penitentiary influence on convicts, willingness to demonstrate humane attitude towards persons serving criminal sentences. The author determined respondents' ideas about significant and insignificant personal qualities that contribute to or hinder the process of humanization in places of deprivation of liberty, their understanding of readiness and their definition of the official behavior pattern that allows them to effectively and systematically carry out the correctional process using humane methods of influence. *Conclusion*: employees' choice of the official behavior pattern based on a humane attitude towards the personality of a convicted person is an effective tool for professional activity within the framework of general humanization of the social sphere. This makes it possible to expand possibilities of the ongoing penitentiary process, the core of which is the fundamental principles of the construction and implementation of socially approved practice of the execution of criminal penalties.

Keywords: penitentiary system, penal system employee, convicts, official activity, behavior pattern, ideas, humane attitude.

5.3.9. Legal psychology and accident psychology.

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Introduction.

The dynamic component of the Russian penal system development at the present stage is determined not only by the specifics of the challenges, goals and objectives, but also by the constantly changing ratio of legal, social, psychological and pedagogical elements of the official activities of employees, which find their expression both at objective and subjective levels. Professional activity in the penitentiary system is considered as a specific form of relationship among its employees, as well as the staff of penitentiary institutions and convicts, aimed at solving the tasks of executing criminal punishment imposed on employees by regulatory documents and requiring them to develop a high degree of skills and extensive specialized training in order to fulfill this social role. It is known that in modern society there is a large number of job occupations characterized by the intense nature of interpersonal relationships in specific social areas, including those with a pronounced extreme and conflict-prone component. Professional and official activities in the penitentiary system are among such occupations. Service of penal system employees is associated with conflict situations and sometimes life-threatening circumstances. Such conditions can have a negative impact on a person, hinder solution of professional tasks, and negatively affect the performance of official tasks. At the same time, person's psychological stability and ability to constructively communicate with various categories of citizens, as well as an effective and reasonable algorithm of actions in extreme conditions and situations, underpin professional activity of penal system employees.

A complex of current problems in the penal system, which in some cases "lead to violations of the rights of convicts and negatively affect the public opinion about the system executing criminal penalties in general and incompetence of employees in particular" [1, p. 272]. In this regard, there is a "need to find ways to boost effectiveness of professional activities of the penal system staff, aimed, inter alia, at carrying out corrective action on convicts by humane methods" [2, p. 24].

Paradoxically, to date, there have been much more studies on the problems of persons in places of deprivation of liberty than studies on the category of persons responsible for working with them. Since in most cases convicts are the object of activity of penitentiary staff, consideration of this factor is one of the fundamental ones in employees' activity. In this regard, it is possible to identify a number of specific requirements for realizing professional activities that have important psychological content: a) formation of a prosocial orientation in convicts by penal system employees; b) development and improvement of practical skills of employees to study the personality of a convicted person in the process of serving a criminal sentence, including using psychological criteria; c) development and maintenance of professionally important qualities at a high level related to the operational situation assessment in the course of official activity; d) promotion of a professional attitude to preventing the use of illegal methods of influence, inhuman cruel, degrading treatment and unlawful use of physical force and special means among employees of a correctional facility.

At the same time, to achieve these requirements is quite difficult. At the moment, service in the penitentiary system requires an employee to have a wide range of competencies in the field of personnel management, law, pedagogy, social and clinical psychology, conflictology for timely decision-making and the ability to competently build and maintain interpersonal relationships in the professional sphere, and perform specific functions related to the execution of criminal penalties. Unfortunately, this is not always observed in practice. In this regard, the importance of forming and improving relevant professional competencies of the personnel is dictated by the ongoing humanization of the domestic penal policy, which is reflected in the Concept for the Development of the Penal System of the Russian Federation for the Period up to 2030 and suggests the existence of an objective need to completely abandon stereotypical approaches to the treatment of convicts and move to a real humane attitude to them on the part of penal system employees [3, p. 48].

Empirical part.

A humane attitude towards a person sentenced to imprisonment is known to be the subject of research of many scientists and public figures, which in itself makes it "multidimensional, quite difficult to study and to a certain

extent contradictory" [4, p. 23]. In relation to convicts, consideration of the humanism concept "is associated with human rights and the analysis of detention conditions in terms of the attitude towards the convict from the standpoint of the personality value" [5, p. 22]. Therefore, humanization of the correction process "begins with the creation of an environment, conditions for correction in penitentiary institutions and also depends on the level of development of personal qualities, formed professional competencies" of the personnel of the penal institution [6, p. 35]. Taking into account the specifics of the problem under consideration, it should be emphasized that the role and importance of the humanization process in places of detention cannot be underestimated, since this form of relationship is one of the key factors of a stable operational environment in correctional institutions. This contributes not only to improving detention conditions of convicts, but also to increasing the effectiveness of their correction, including through employees' conscious attitude to humanism.

Taking into account the indicated problem, the subjective component of the professional activity of penal system employees is of interest, which consists in the personal perception and understanding of the functional duties assigned to them, as well as the existing views on the problem of relations with convicts, expressed in the choice of one or another model of official behavior in the process of exercising penitentiary impact on them.

To this end, a questionnaire survey was conducted at the Tomsk Institute for Advanced Training of Employees of the Federal Penitentiary Service in 2023. It covered current penal system employees undergoing training (vocational education, vocational retraining, advanced training), as well as members of public monitoring commissions (hereinafter – PMC). Respondents were divided into two experimental focus groups formed on the basis of professional experience and a control focus group.

The Focus Group 1 is comprised of penal system employees being trained under the educational program "Vocational training of citizens first recruited into the penal system" (persons with up to one year of service in the penal system) – 42 people (n=42). The composition of the group allows us to assume that respondents have a low and average formation level of the official behavior pattern, part of which is a humane attitude towards people in conditions of social isolation. This group is represented by relatively equal proportions of female (n=24, 57.1%) and male employees (n=18, 42.9%), which confirms a general upward trend of women in the penitentiary service. All respondents of the Focus Group 1 are in the group aged under 40. Most of them are young people aged 18–30 years (73.8%) and only 26.2% aged 30–40 years.

The Focus Group 2 is compound of employees with 5 years or more of service in the penal system, whose duties are directly related to ensuring that the staff of a correctional facility do not use illegal methods of influence, treat convicts well and observe the law when applying physical force and special means. This group includes employees of security departments of the correctional facility, regime departments of the pre-trial detention center, operational departments of the correctional facility and the pre-trial detention center, squad heads of the correctional facility, employees of psychological laboratories of the correctional facility and the pre-trial detention center – a total of 98 people (n=98). These are those employees, who are supposed to have a more holistic official behavior pattern that contributes to the humanization of the process of correcting convicts. It should be noted that their distribution by gender is significantly different from the data obtained for the Focus Group 1. The share of male employees is significantly greater (n=75, 76.5%) than that of women (n=23, 23.5%). The age composition of the surveyed employees of the Focus Group 2 allows us to identify two relatively equal groups: 54% – persons aged 25–35, 46% – persons aged 35–45.

The Focus Group 3 includes members of public monitoring commissions, as persons exercising public control over ensuring human rights in places of forced detention – 10 people (n=10). These respondents act as supervisors (third-party experts) who are well acquainted with the problem of the possible use of illegal (inhumane) methods of influence on convicts (suspects, accused people) by penal system employees.

Thus, the total number of respondents was 150 people (n=150).

We have already noted that serving in institutions executing criminal penalties places increased demands on moral (essentially human) qualities of employees, their level of "emotional endurance, tolerance, self-control, social immunity to the possible effects of criminal subculture and other unfavorable factors" [7, p. 50]. In this regard, personal qualities of employees are of particular importance, which in their official activities become professionally significant and necessary in solving various situations related to relationships and interaction in the context of the existing dyad "employee – convict".

It seems essential to focus on personal qualities of employees, the consideration of which will contribute to the development of appropriate skills and abilities within the framework of humane implementation of the penitentiary (correctional) process in working with convicts.

The analysis of the data obtained during the survey showed that for the respondents of the Focus Group 1, "stress tolerance" (66.7%) is a crucial component when considering the specifics of penitentiary activities. At the same time, based on the processing of results of the ranking of the considered indicators, 90% of the respondents rank this quality from first to third. There is no doubt that stress tolerance is an important component when considering the specifics of penitentiary activities. Penal system employees meet high requirements for service, including a level of stress resistance higher than that of an "ordinary" citizen. A quality, such as "balance", is ranked second (40.1% of the respondents put it in one of the first three places). We believe that this quality is certainly important for solving various operational and educational tasks, since penal system employees should control their emotions and remain calm in difficult situations. This allows them to effectively perform their official duties and ensure the safety of both their colleagues and convicts. It seems important that an employee remains calm in any difficult situations, makes decisions based on logic and common sense, not emotions. The results obtained show that stress tolerance and balance are key interrelated qualities necessary for the effective performance of tasks within the framework of professional penitentiary activities related to the humanization of the process and conditions of serving a criminal sentence.

A quality, such as "justice" (the total rank value, taking into account the degree of importance of the first three places, amounts to 30.1%), which can be considered to a greater extent as one of the moral values that helps form a positive professional attitude both to personal self-determination and group work.

Nevertheless, attention should be paid to the fact that respondents identify insignificant qualities (the last three places in the ranking), such as "sincerity" (26.7%), "initiative" (23.3%), "fairness" (23.2%), "nonjudgmental attitude" (20%), and "empathy" (20%).

These qualities are more or less important, though underestimated by young penal system employees. This can be explained by the fact that at the beginning of their service they face strict subordination inherent in service teams performing important law enforcement functions, the current principle of unity of command and the prevailing dominant attitude to persons serving criminal sentences in places of deprivation of liberty. Another reason may be employees' lack of awareness of their strengths due to a short period of time in the service, lack of professional experience, as well as psychological denial of certain qualities subjectively understood as unnecessary and unimportant.

We believe that employees of the psychological service should pay attention to the development of stress tolerance and balance in the course of performing functional duties, as well as communicative qualities. It is the harmonious combination of relevant elements in the personality structure of a first-time employee, taking into account the development of professional abilities, that will allow him/her to form the dominant orientation of his/her personality in line with the humanization of the penitentiary influence process.

A slightly different picture is observed when analyzing responses of employees with more than the 5-year public system service (Focus Group 2). Also, like the respondents of the Focus Group 1, they find "stress tolerance" (50.1%) as the most significant quality to prevent the use of illegal impact methods in relation to convicts (suspects, the accused) by penal system employees. Employees consider "balance" to be the next most important indicator (24.5%), followed by "fairness" (16.3%).

It is noteworthy that these three qualities are consistently present in the responses of most respondents. Taking into account the total ranking indicators according to the degree of importance of the first three places, 80.7% of respondents chose "stress tolerance", 58.2% – "balance", and 52% – "fairness". It should also be noted that the number of important personal qualities included "self-discipline" (36.7% in the sum of the first three places in terms of importance), and "sociability" (35.7%).

The following qualities do not seem relevant for experienced employees: "sincerity" (more than half of the respondents (52%) rank this quality the last), "lack of self-esteem" (43.9%), "empathy" (39.7%). In our opinion, employees' underestimation of these qualities can act as an emotional burnout marker, and, as a result, professional deformation in the course of service.

Unfortunately, we have to admit a certain unhealthy skepticism and personal detachment in the course of working with convicts, manifestations of narrow egoistic interests, a kind of "closed" understanding of their professional activities. So, many penal system employees have distorted moral attitudes and levelled basic personal qualities related to respect and protection of the rights, freedoms and human dignity.

When analyzing responses of public monitoring commissions members (Focus Group 3), we find out that "stress tolerance" (60%) is the most significant quality to prevent the use of illegal influence methods in relation to convicts (suspects, the accused) by penal system employees. Besides, there is a number of distinctions associated with a slightly different view of the Focus Group 3 on professional activities of penal system employees, including critical ones. Thus, 20% of the respondents put qualities, such as "nonjudgmental attitude" and "sincerity", first.

It should be noted that the staff of the penitentiary service does not consider these qualities as significant in the implementation of penitentiary measures with persons in places of deprivation of liberty. According to the PMC members, the actualization of methods of psychological verification of sincerity in human behavior is of great importance, which is an important prerequisite for the successful professional activity of employees. The same can be said about self-esteem as an important competence for successful interpersonal communication and professional activity, which helps to see the convict objectively, understand and evaluate him without bias and judgments. A high importance of "balance" (80% of the respondents ranged it second) is noteworthy. Penal system employees work with people who are in a difficult life situation, that is why face unpredictable behavior of convicts. Therefore, balance, according to the Focus Group 3 respondents, is one of the crucial qualities that a penal system employee should have. A balanced employee is able to effectively manage difficult situations while maintaining his/her emotional stability, control his/her emotions and prevent them from influencing his/her actions, including when solving issues related to assessment of convicts' behavior.

According to the Focus Group 3, personal qualities insignificant for penal system service are as such: "empathy", "emotional flexibility", and "initiative". Nevertheless, we would like to draw attention to the fact that a lack of control over one's emotional state can cause negative consequences in the service, such as loss of control over the situation, mistakes in decision-making, and interpersonal conflicts. On the other hand, the respondents believe that penal system employees should be able to set boundaries in their relations with persons serving criminal sentences in order to prevent violations of their rights and not be subjected to emotional pressure from representatives of the criminal environment. Therefore, it is necessary to pay attention to the management of emotions and their role in the activities of a penal system employee.

The next important aspect of the study was to identify the respondents' opinions regarding the choice of a behavior pattern, which indicates that the employee is ready (inclined) to apply inhumane (illegal) influence methods. As previously noted, during the implementation of professional competencies, employees serve in difficult stressful situations, are exposed to professional risks, experience negative psychological effects on the part of the suspected, accused and convicted persons, which inevitably leads to personal changes expressed in manifestations of their professional deformation, such as "increased aggressiveness and

emotionality, irritability, frustration, depression, and speech aggression" [8, p. 49].

The respondents of the Focus Group 1 identify behavioral qualities, (indicators), which demonstrate an employee's readiness to use illegal influence methods, characterized as inhumane, against a convicted person: manifestation of physical aggression by an employee in case of disagreement with his/her opinion (23%), manifestation of temper by an employee if his/her instructions are not followed (23%), demonstration of verbal aggression by an employee in case of disagreement with his/her opinion (15.4%), manifestation of excessive perseverance by an employee in relationships with other people (15.4%).

To the least extent, demonstration of indifference by an employee in the case of a convict contacting him/her with a problem (69.2% of the respondents place this indicator in the last three places), demonstration of overestimated self-esteem (61.5%), and commission of acts in relation to convicts for selfish reasons (38.5%) will trigger unlawful actions on the part of convicts.

It seems to be an important aspect to consider professional behavior patterns and manifestations of employees with more than 5 years of service experience. One of the problems, in our opinion, is that employees, using their authority and official position, may allow manifestations of physical aggression towards convicts in case of conflict situations. Undoubtedly, this problem is very relevant, since 63.3% of the surveyed experienced employees indicate its existence, while 32.7% consider it crucial to solve. 19.4% of the respondents believe that an employee may use illegal impact methods against a convicted (suspected, accused) person when being furious that his/her instructions are not followed. Attention should also be paid to employees' demonstration of arrogance towards convicts and their overestimated self-esteem (16.3% of the respondents consider this indicator to be the crucial one). Also, 16.3% of the respondents believe that the employee's willingness to commit certain illegal actions is indicated by excessive persistence in relationships with other people. The analysis of the ranking, taking into account the importance of indicators for the first three positions, also show that the high probability of committing illegal actions includes demonstration of verbal aggression by an employee in case of disagreement with his/her opinion (52%).

The respondents of the Focus Group 2 consider the following indicators as insignificant: demonstration of indifference when a convict asks an employee to solve a problem (24.2%); demonstration of excessive self-esteem (22.4%); employee's manifestation of excessive perseverance in relationships with other people (20.4%).

According to the respondents of the Focus Group 3, attention should be paid to behavioral qualities (indicators) that show an employee' readiness (inclination) to choose an inhumane behavior pattern towards convicts: demonstration of verbal aggression in case of disagreement with his/her opinion; demonstration of overestimated self-esteem (80% of the respondents rank it from first to third), manifestation of an employee's temper if his/her instructions are not followed (60% of the respondents note it).

The most insignificant indicators of the parameter under consideration are the following: manifestation of excessive perseverance by an employee in relationships with other people (100% of the respondents put this quality in the last 3 places), absence (thoughtless change) of their point of view due to the statement and inability to resist the opinion of the team (group) (60% of the respondents).

In our opinion, the most relevant is the likely (predictable) choice of a particular behavior pattern, which will act as a marker that an employee, on the contrary, will demonstrate a humane behavior pattern in official activities. In this case, the relevant behavioral portrait of an employee is important, the essence of which is that it is not the quality of character or psychological feature itself that comes to the fore, but how it will manifest itself in certain official situations, how a person will behave in specific conditions providing for contacts with persons serving criminal sentences in places of detention. For example, such a portrait includes information about behavioral risks of an employee, motivating and demotivating factors, communicative features, the prevailing current emotional background, etc.

Persons from among those recruited for the first time believe that controlling their emotional state, especially in conflict situations, will con-

tribute to the rejection of choosing a behavior pattern that may facilitate the use of inhumane methods of influence against convicts (this is noted by 82% of the respondents; 50% rank this indicator first). The next most important indicator is the ability to focus on important points of activity in a stressful situation, not to get involved in disputes (62.8% of respondents rank this quality from first to third). Besides, 59.3% of the respondents indicate an employee's orientation towards key goals and general requirements when solving official tasks, despite any external pressure factors.

Not so important for forming an effective behavior pattern are successful establishment of contact with other people, creation of an atmosphere of trust and mutual understanding (73% of the respondents put this quality in the last three places), identification of the causes of the current non-standard office situation, followed by the proposal of a clear, logical and practical solution to the problem (68.2%), and the necessity to take responsibility in solving official tasks related to the execution of criminal penalties (67.9%, while 36.4% of the respondents rank it last).

Thus, it seems important to take into account the actual emotional state of young penal system employees in the course of performing official tasks aimed at observing the rule of law in places of detention. We believe that this will not only improve their work, but also improve the quality of execution of sentences and protection of the rights of convicts.

An employee's focus on using humane methods of influencing a convicted person is an important aspect of professional ethics. Most employees with extensive service experience in correctional institutions understand that the use of inhumane methods can lead to violations of the rights and dignity of convicts, as well as to negative consequences for correctional workers themselves.

Most respondents of the Focus Group 2 believe that when exerting penitentiary influence on convicts (especially in conflict situations) it is necessary to keep emotions under strict control, not to let them spill out, so as not to provoke further development of any conflict situation (note that 56.7% of the respondents rank it first and 78.1% put this factor in the first three places). In this case, it is important to take into account features of speech activity (content, intonation of speech, presentation of verbal material, semantic aspects), facial expressions, and gestures. No less significant is another behavioral and volitional aspect related to an employee's ability to focus on important points when communicating with a convict (which is often stressful), key goals of the penitentiary process, and general requirements imposed on convicts, despite external socio-psychological factors (64.3%, according to the ranking by the degree of importance (first three places)).

According to experienced employees, responsibility in solving official tasks related to the execution of criminal penalties (26.5% of the respondents rank this quality last), as well as the ability to quickly change their approach to decision-making when the situation requires it (21.4%), are not so important for the formation of an effective behavior pattern.

The members of public monitoring commissions also note the importance and relevance of manifestation of some components of professional ethics and standards of conduct in professional activities of the penal system personnel, which include adherence to a humane behavior pattern in official activities. The existence of such a pattern contributes to maintaining public trust and respect for the functioning of the Federal Penitentiary Service, since correctional officers are representatives of the state and should act in accordance with high standards of professional, social and moral norms.

According to the respondents of Focus Group 3, the emotional component of official activity should be of particular importance for penal system employees. Thus, the importance of controlling emotions, especially in conflict situations, is noted by 100% of the respondents. It also seems to be a priority that in a stressful situation, an employee is able to focus on important points rather than get involved in disputes (80% of the respondents believe so, according the ranking by the degree of importance). 40% of the respondents believe that during the penitentiary impact on convicts, an employee should maintain a mature and even restrained point of view, make objective decisions, despite the existing cases of psychological pressure, both from the management of the institution and from representatives of the criminal environment.

As an insignificant indicator in the penitentiary system, the PMC members indicate the possibility of changing their approach or style of work with convicts under the influence of changing circumstances in the institution, or the current situation (80% of the respondents put this factor in the last 2 places).

In addition, focus on the use of humane methods of influencing convicts is of practical importance for ensuring the safety and effectiveness of correctional institutions. Violation of the rights and dignity of convicts can lead to conflicts and violence within the institution, which poses a threat to life and health not only for convicts, but also for penal system employees.

Conclusion.

Penal system employees carry out duties to ensure safe detention conditions for convicts and preserve their life and health – the main human value. Accordingly, a humane attitude towards the personality of a convicted person is not only the basis of the regulatory framework of domestic penal legislation, but it also sets a clear vector aimed at developing skills and abilities that allow choosing the most effective official behavior pattern with regard to a specific area of activity. Of course, this will help young people become more effective and successful in their work, identify their strengths and weaknesses, improve their skills, and gain important experience in the practice of humane treatment of persons who have violated the law.

Consideration of the predicted behavior pattern of a penal correction officer with a pronounced humanity vector will help determine with great accuracy the fundamental principles of conducting vocational training (academic discipline with regard to the specifics of the job category being trained), which further will contribute to forming professional competencies aimed at humane treatment of convicts. In this regard, special attention should be paid to the following organizational measures that will contribute to the formation of both professional qualities and appropriate behavioral patterns in the office activities aimed at preventing inhumane methods of influence, inhuman cruel, degrading treatment: a personal example of direct and immediate supervisors demonstrating respect for the personality and dignity of employees of the office, conducting special thematic classes in the service training system, bringing to legal liability employees who have committed cases of physical and psychological humiliation of convicts.

In conclusion, it should be noted that today a fairly wide range of measures is being carried out with the penal system personnel to form mature and adequate motivation to perform official tasks, actualize psychological readiness for service in specific circumstances, develop professional and psychological qualities of employees, as well as the ability to use verbal and non-verbal means of communication when working with different categories of convicts. Accordingly, their professional activity, like no other, is aimed at humanizing the process of execution of punishments by mitigating emotional tension between prison staff and convicts, which is an integral component of the successful and effective penitentiary system as a whole.

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INFORMATION ABOUT THE AUTHOR

OLEG M. PISAREV – Candidate of Sciences (Psychology), Associate Professor, Head of the Department of Organization of Personnel, Social, Psychological and Educational Work of the Tomsk Institute for Advanced Training of Employees of the Federal Penitentiary Service, Tomsk, Russia, ti.okspvr@mail.ru, https://orcid.org/0000-0002-3559-6524

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Components of Pedagogical Culture of Teachers at Educational Organizations of the Federal Penitentiary Service

TAT'YANA V. KIRILLOVA
Federal State Institution Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia,
Academy of the FPS of Russia, Ryazan, Russia,
tatiana-kirillova@rambler.ru, https://orcid.org/0000-0001-8394-897X

Abstract

Introduction: the article considers a problem of improving professional-pedagogical culture of teachers of educational institutions of the Federal Penitentiary Service. The research is relevant, since there is a lack of scientific understanding of the essence, content and structure of this phenomenon in the context of activities of departmental educational institutions and teachers have certain difficulties in introspection and planning their professional development. *Purpose*: to analyze scientific ideas about the content of concepts of pedagogical culture, professional-pedagogical culture and pedagogical proficiency, to identify structural components of professional-pedagogical culture of a teacher at a departmental university. *Methods*: theoretical (analysis, comparison, generalization, systematization of psychological and pedagogical literature) and empirical (observation, survey, generalization of pedagogical experience) research methods. *Results*: the author proposes a structure of pedagogical culture of teachers of educational institutions of the Federal Penitentiary Service, presented through the identified stages of pedagogical activity and pedagogical proficiency necessary at each selected stage. The first stage is associated with the solution of psychological and pedagogical tasks for the study and diagnosis of students, their needs and requests, their interests, the definition of a set of educational and educational goals, pedagogical goal-setting. The second stage is related to planning, the third one includes practical implementation of the plans, the fourth one is the analysis of pedagogical tasks and critical assessment of the pedagogical work done. *Conclusion*: the proposed structure of professional pedagogical skills, a list of pedagogical skills and their generalized qualitative characteristics can provide practical assistance to teachers in organizing self-development, self-education, introspection, self-education, to determine the level of their pedagogical maturity, pedagogical skills and pedagogical culture.

Key words: professional activity, teachers; pedagogical culture; pedagogical skills; educational organizations of the Federal Penitentiary Service; penal system.

5.8.1. General pedagogy, history of pedagogy and education.

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Introduction

In modern conditions, when the future can hardly be forecasted both at the level of an individual and at the level of society as a whole, when the whole society is transforming and the processes of continuous transitivity and changing social reality lead to unreflected and uncontrollable stress states, there are concepts and processes in the education system that remain invariably important and significant. These are the processes to form pedagogical culture of teachers, the presence or absence of which influences the entire result of pedagogical activity.

The importance of pedagogical culture is reflected in the works of V.A. Sukhomlinskii, who wrote, "if a teacher thoughtfully analyzes his/her work, he/she cannot help but have an interest in theoretical understanding of his/her experience and a desire to substantiate cause-and-effect relationships between students' knowledge and his/her pedagogical culture", ... "a teacher is not only a profession, the essence of which is to transfer knowledge, but also the high mission of creating a personality, affirming a person in a person ... "it is necessary to identify, reveal and develop everything valuable in a person ... to recognize, identify, reveal, and nurture in each student his/her unique individual talent, that is to raise the personality to a high level of human dignity flourishing" [1, p. 102].

However, dynamic changes in society, leaving their imprint on the processes of training cadets at educational institutions of the Federal Penitentiary Service (FPS of Russia) pose to researchers the task of analyzing and comprehending the phenomenon of pedagogical culture in new conditions, identifying its content and structure.

The concept "pedagogical culture" is included in the practice of pedagogical activity; moral and aesthetic, communicative, technological, and spiritual aspects of the teacher's personality are studied. Authors understand pedagogical culture as part of general culture of the teacher, manifested in the system of professional qualities and the specifics of pedagogical activity [2].

Many scientific papers are devoted to various aspects of the formation of pedagogical culture and pedagogical skills.

A systematic approach to organizing lifelong education of higher school teachers in Russia and abroad is described in the works of L.V. Kuznetsova, G.U. Matushanskii, L.I. Solomko, and Yu.V. Sorokopud [3–6].

The development of pedagogical professionalism of a teacher is studied by V.A. Akindinov, S.P. Zheltobryukh, E.A. Nagornyi [7–9]. E.V. Ryabukha considers a concept, structure and ways to improve pedagogical culture of a teacher at a military institute [10].

A.A. Karavanov and I.Yu. Ustinov describe a phenomenon of professional pedagogical culture of a military university teacher in the historical context [11].

V.Kh. Akhmedov focuses on the development of professional skills among military university teachers during retraining and advanced training. A.K. Bykov studies the theory and practice of developing pedagogical skills of teachers of higher military schools [12,13].

In the context of activities of educational organizations of the Ministry of Internal Affairs of Russia, the problem is considered by A.N. Lazukin and S.F. Serdyuk [14; 15].

However, insufficient attention is paid to the formation of pedagogical skills and pedagogical culture of teachers of educational organiza-

tions of the FPS of Russia and their importance in boosting effectiveness of cadet training. The analysis of scientific literature gives grounds to assert that this phenomenon is considered only in works of L.V. Shatokhina, D.V. Sochivko and M.M. Kalashnikova devoted to forecasting issues [16] and the author's studies [17–21] related to the pedagogical proficiency phenomenon. Having analyzed the content of the concept of "pedagogical proficiency", we conclude that in the situation of a low level or complete lack of pedagogical culture, a teacher can hardly have pedagogical skills.

In our works, we presented the following definition: "professional culture of a teacher of an educational organization of the FPS of Russia is an essential characteristic of the integral personality of a teacher, which is a set of systemic components, such as systems of professional knowledge (psychological, pedagogical, subject, cultural, historical, etc.), systems of value orientations (personal and professional), professional behavior, professional ethics, and professional activity. Professional culture of a teacher is the result of his/her competence, professionalism and personal self-development" [22, p. 7]. Therefore, we believe it necessary to consider these issues in more detail, although not in their entirety, since the systematic disclosure of this problem requires monographic research.

Let us consider the content and structure of the concept "pedagogical culture" proposed by modern scientists who have studied this phenomenon.

N.V. Khodyakova considers culture to be a personal phenomenon, a relatively integral subsystem of professional and general human culture associated with it by common categories (culture of thinking, behavior, communication and activity). She suggests the following structure of pedagogical activity culture: axiological (acceptance of the personal level of the humanistic value of pedagogical activity); communicative and ethical (culture of communication and cooperation in the field of professional-pedagogical contact, effective use of various communication methods for interpersonal and collective interaction, moral behavior in the field of relations); cognitive and intellectual (competence and free orientation in the field of technology, flexibility and adaptability of thinking, its logical and reflective nature, independence and openness to new things); predictive (foreseeing possible consequences of pedagogical activity, professional and social adaptation in constantly changing conditions); and applied (using technological capabilities for the most effective solution of professional tasks, releasing a specialist from performing routine operations), etc." [23].

A number of scientists study this concept in the context of military pedagogy. We should mention ideas of A.V. Barabanshchikov and S.S. Mutsynova believing that pedagogical structure is a synthesis of pedagogical beliefs and skills, pedagogical ethics and professional pedagogical qualities, the style of educational work and the teacher's attitude to his/her work and him/herself. They identify the following personal and professional-pedagogical qualities: 1) a military-patriotic orientation, high psychological and pedagogical erudition, intelligence, harmony of intellectual and moral qualities, pedagogical optimism. The second group includes high pedagogical skills, constant reliance on scientific data and best practices in teaching and upbringing, a sense of novelty and creative search in educational and organizational work, pedagogically effective communication and behavior, as well as urge for self-improvement" [24].

We back the point of view of L.D. Stolyarenko, who considers pedagogical culture as a dynamic system of values, ways of activity and professional behavior of a teacher. She highlights components of pedagogical culture, such as the teacher's pedagogical stance; the teacher's professional and personal qualities, reflecting orientation of his/her personality, professional and moral character, attitude to pedagogical work, his/her interests and spiritual needs; professional knowledge; professional skills; pedagogical thinking culture, self-regulation of the personality and professional behavior culture [25].

T.V. Ivanova suggests considering pedagogical culture as an integral part of a general culture of the individual, considering the concept of teacher's pedagogical culture as an integrative quality of his/her personality. In her opinion, the structure of pedagogical culture is comprised of a certain orientation (high methodological and methodical culture of the teacher, presence of moral and ethical values,

willingness to carry out creative activities); cultural experience (knowledge of culture, ability to communicate with culture and in culture, to reproduce it); new pedagogical thinking (ability to make culturally conditioned judgments, to know and experience culture, to self-define culture) [26].

Z.N. Kaleeva and T.E. Isaeva propose using pedagogical culture and professional competence of a higher school teacher as indicators of the educational process quality [27; 28]

Along with the term "pedagogical culture", the concept "professional-pedagogical culture" is spread in scientific research. So, P.I. Kostenok in his works considers the essence, structure and content of the concept of professional-pedagogical culture. He highlights features and key conditions for the development of professional-pedagogical culture of a military university teacher: professional and pedagogical self-development (self-improvement) of the teacher's personality and development of the professional and pedagogical space of the university [29].

In our opinion, his reflections on the need to distinguish between concepts of "professional and pedagogical competence" and "professional pedagogical skills" are important. He notes that it is legitimate to understand pedagogical culture of the personality as an integrative quality of personality that determines the high effectiveness of pedagogical activity; a condition and prerequisite for effective pedagogical activity; a generalized indicator of teacher competence; the goal of professional self-improvement. At the same time, it is argued that professional-pedagogical culture, understood as an integrative quality of personality, can be considered as a combination of professional-pedagogical competence, developed to the pedagogical skill level, and a general culture of personality.

I.F. Isaev proposes the following structure of professional-pedagogical culture: "axiological (value), technological and personal-creative components" [30].

V.L. Benin considers the problem in a philosophical and sociological aspect, N.N. Kostina studies foreign experience of professional and pedagogical training of higher school teachers, E.N. Zolotukhina and A.A. Chervova determine the essence and identify key components of pedagogical culture of a higher school teacher [31–33].

Results

We would like to propose our own view on the structure of pedagogical culture. The study of numerous scientific articles provoked the idea of presenting the structure of pedagogical culture of a teacher of an educational organization of the FPS of Russia through the identification of stages of the teacher's pedagogical activity and pedagogical skills necessary at each selected stage. We purposefully avoid concepts of "competency" and "competence", limiting our reasoning to the concepts of "pedagogical skills".

Pedagogical skills of a teacher of an educational organization of the FPS of Russia as a subjective human factor reflect his/her upbringing, worldview and character traits and are components of professional-pedagogical culture. One should not underestimate the importance of the subjective factor, the teacher's ability to make the right pedagogical decisions and act pedagogically correctly. The quality of the decision is influenced by emotionally subjective factors and the evaluation of information. The ability to work with information, competently evaluate it and use it skillfully contributes to improving quality of the solution. A teacher of an educational organization of the FPS of Russia succeeds when he/she is aware of the psychological structure of pedagogical activity, its functional features, a system of indicators that allow evaluating educational decisions and actions as a skill, has a high professional-pedagogical culture.

Let us identify basic pedagogical skills necessary for a teacher of a departmental educational institution to succeed in his/her activities.

There is an infinitely large number of specific heuristic decisions and actions in pedagogical activity. Therefore, in order to develop a model of pedagogical skills of a teacher with high pedagogical proficiency and professional-pedagogical culture, it is necessary to identify and justify a set of the most significant pedagogical actions. Thus, we will create a conceptual model of pedagogical culture.

Having generalized theoretical material and analyzed advanced pedagogical experience, we identified a list of typical skills and reflected it in limited structural and functional mod-

els of the stages of pedagogical activity of a teacher.

Following well-known teachers, we highlight the following stages of the activity of a teacher of an educational organization of the FPS of Russia. The first stage, in our opinion, is connected with the solution of psychological and pedagogical tasks for the study of students, their needs, requests, and interests. Based on this, a set of educational goals is determined. This is how pedagogical goal-setting is carried out. The second stage of teaching is related to planning upcoming classes, the third – practical implementation of the planned plans, and the – analysis of results of the teacher's solution of pedagogical tasks and assessment of his/her successes and shortcomings of teaching activities. This stage presupposes determination of the extent of the goal achievement, comparison of initial and new knowledge, interests, states formed in students, and changes that have occurred. Reasons for successful and unsuccessful pedagogical impact and effectiveness of the educational tools used, methods and forms of teaching are analyzed.

At the first stage, we consider it necessary that a teacher of the educational organization of the FPS of Russia has the following set of successful heuristic actions.

1. Ability to observe – selection of the most significant psychological and pedagogical factors, consistent implementation of plans and programs, accumulation of facts in the process of teaching, generalization of facts in diagnostic conclusions.

2. Ability to talk – expediency, accurate rapid formulation of significant problematic issues in a tactful manner; prompt identification of key issues of interest to the teacher and students; inviting students to talk; psychological and pedagogical consideration of features in individual and group conversations; quick selection and use of persuasive arguments, achieving an atmosphere of trust, frankness; correct and generalizing conclusions from the established facts given in the conversation.

3. Ability to use interviews – compilation of different types of survey programs; ability to record facts economically and accurately during a conversation, highlighting the most significant features; ability to draw reliable conclusions based on the material collected.

4. Ability to use students' creative work – quick acquaintance and analysis of students' creative work; fixing the information that can be used during subsequent classes.

5. Ability to use psychological and pedagogical knowledge to assess the mental state of students – correlation of psychological and pedagogical knowledge with the observed states of students; systematic description, explanation of facts characterizing the mood, attitudes, needs of listeners; in accordance with the logic of solutions to educational tasks; creative operation of conclusions obtained as a result of analyzing the situation with knowledge for the purposes of pedagogical diagnostics of students and groups of students, prompt consideration of upcoming solutions to educational tasks.

6. Ability to use knowledge to determine a set of specific educational tasks – correlation knowledge of the general purpose and content of education with the real knowledge of listeners; use of predictive tasks for the correct formulation of a set of educational goals of the lesson; taking into account real cognitive capabilities of students and practical work conditions when determining the purpose of classes.

7. Ability to compare facts – use of comparison techniques, correlation facts and determination of their similarities and differences, fixing degrees of greater or lesser severity of certain features or the state of pedagogical objects.

At the second stage of the work, as a rule, the following typical successful pedagogical actions are essential:

1. Ability to determine a system of pedagogical tasks and highlight the main one when working out a lesson plan – identification of a set of tasks that differ in content, methods, and means of solving them; determination of the relationship between tasks and finding out that the solution of some is related to the results of solving others.

2. Ability to determine basic conditions for solving problems – forecasting necessary and sufficient, objective and subjective conditions, the implementation of which ensures effective solution of educational tasks in the learning process.

3. Ability to forecast degrees of professional, cultural and moral development of students – building a model of possible options

for presenting professional and other information to students during classes; forming hypothetical ideas about what new knowledge can be formed, what aspirations, moods and needs students may have as a result of planned classes.

4. Ability to select methodological material and work out lesson materials – selecting, grouping, and summarizing information from various sources for educational or training purposes, for classroom work, presenting it in a relevant order, planning, taking notes, etc.

5. Ability to plan active forms, methods and techniques of presenting material in class – working out various types of evidence, demonstration complexes, practical tasks that activate cognitive activity of students; modeling a possible problem situation and possible ways to solve them.

6. Ability to plan the work of individual students – forecasting possibilities of solving different types of tasks by individual students, taking into account their abilities, interests, development prospects, as well as the specifics and difficulties of the tasks assigned to them.

7. Ability to mentally put oneself in the student's place – development of specific judgments about individual students and their most likely mental states on the basis of theoretical psychological and pedagogical knowledge.

8. Ability to plan relationships with students – forecasting relationships with students, taking into account the collected pedagogical information, making assessments when planning the learning process.

9. Ability to plan presentation of educational material and draw up lesson plans – making a logical sequence of key provisions of the content, predictive information, preliminary analysis, selection of information in accordance with the lesson tasks.

10. Ability to evaluate activities of other teachers and use their experience to plan and improve their work – identification of advantages and disadvantages of solving pedagogical tasks by other teachers, creatively using advanced pedagogical experience to plan their teaching activities.

At the third stage of the work of a teacher of an educational organization of the FPS of Russia, the following typical pedagogical actions are manifested and are essential:

1. Ability to communicate information – presenting information scientifically and reliably, clearly, logically, concisely, emotionally expressive, promptly, timely and quickly.

2. Ability to convince and prove – conducting evidence purposefully and argumentatively; creating an emotionally endearing atmosphere, presenting educational material enthusiastically, observing pedagogical tact, posing questions correctly, ensuring agreement with the teacher's point of view, correcting students' erroneous reasoning promptly if they are found during the lesson in the form of replicas or incorrect questions.

3. Ability to expediently use the content of the lesson for educating students – use of an integrated approach to the content of education during lessons; taking into account the purpose of education when choosing scientific and methodological content of information; implementation of such a content, which is as fully consistent as possible with the tasks of educational work the teacher faces.

4. Ability to use a variety of pedagogical tools, including technical and informational ones, practical application of pedagogical tools that best meet educational tasks; implementation of appropriate pedagogical instrumentation; effective use of a complex of technical and information-technical training tools.

5. Ability to show a personal example – demonstration, clear explanation and demonstration of ways and techniques of doing work; using a variety of opportunities to exercise moral influence on students through their teaching activities and appearance.

6. Ability to stimulate self-education of students and provide them with methodological assistance – providing practical assistance through appropriate advice, explanations, demonstrations; using beliefs and showing interesting tasks in order to encourage students to self-education.

7. Ability to build and maintain contact with students during the lesson, pedagogical communication – manifestation of genuine concern for students' interests; manifestation of humanism, patriotism, internationalism, and fairness during lessons.

8. Ability to carry out operative and postoperative control over students' perception of the material – assessment of the quantity and qual-

ity of the information learnt with the help of various methods and feedback forms, tactful advice on what to do in order to better memorize key ideas of the studied material.

The final, fourth, stage, is characterized by the following pedagogical actions.

1. Ability to determine the goal achievement degree by establishing whether students are satisfied or dissatisfied with the lesson and the material studied by their questions, wishes and feedback. The assessment of various facts indicates students' attitude to the material presented, the pedagogical techniques used, evidence, the teacher's pedagogical skills and personal qualities, etc.

2. Ability to identify causes of the shortcomings of pedagogical actions or activities – self-criticism, analysis of one's work, establishing a correlation between the completed pedagogical activity and its pedagogical results.

3. Ability to correlate one's experience with the theory of pedagogy and methodological recommendations – analysis of the compliance of one's pedagogical activity with requirements of the pedagogical theory and methodological recommendations; prompt self-assessment of the degree of creative achievements and methodological errors in solving pedagogical tasks.

4. Ability to use analysis results to plan the next stage of teaching activities – summarizing results of the teaching activity analysis and making practically significant conclusions to use them in setting the following pedagogical tasks.

All these stages of the pedagogical activity process of a teacher of an educational organization of the FPS of Russia are mediated by a system of value orientations. A teacher, based on values of our society and tasks of developing the penal system, determines what he/she needs to do to improve his/her teaching activities, so that each lesson actively stimulates both teachers and students to personal and spiritual growth.

Conclusion

Every teacher of an educational organization of the FPS of Russia, reviewing possible options for his/her pedagogical decisions and actions, makes a choice in favor of some and against others. At the same time, effectiveness of his/her professional activity is decisively influenced by his/her pedagogical culture and character traits. Skillful actions of a teacher always show his/her business, moral and personal qualities, his/her pedagogical culture and pedagogical skills. Thorough work with new scientific, socially and politically significant information and its assessment from different angles of view in preparation for classes depend on the degree of maturity, worldview and moral orientation of the teacher's personality, his/her professional-pedagogical culture.

The teacher's self-discipline, from the point of view of implementing the principle of problematic presentation of educational material, also shows culture of the teacher's personality and, as a result, has a certain educational impact on students. Intellectual, emotional, strong-willed character traits of a teacher are somehow manifested in the system of relations between a teacher and students and in the specifics of his/her communication with listeners. Therefore, every teacher needs to consistently and persistently work on their professional-pedagogical culture and formation of professionally significant character traits, such as self-control, emotional stability, self-criticism, tolerance of other people's opinions, pedagogical tact, etc.

It should also be pointed out that the educational process in departmental educational organizations differs in a number of features. These are the normative-legal and organizational-managerial regulation of life and activity; practice-oriented education and upbringing, taking into account the specifics of future professional activity, characterized by special conditions of service; subordination, disciplinary relations in the service, secrecy, limited contacts with relatives, increased requirements for physical training. These and other features also have an impact on the educational process as a whole and on the formation of pedagogical culture of the teaching staff. As it has been already pointed out, distinctive indicators of professional culture of a teacher of an educational organization of the FPS of Russia are the ability to organize a pedagogical process in conditions of strict subordination and combining training with the performance of official duties by cadets, as well as a creative approach to the disciplines taught and the pedagogical process itself. A teacher creates his/her own individual

educational environment and an individual culture of learning and pedagogical communication. A teacher with a high level of pedagogical culture has a high spiritual culture, a highly developed personal sphere, identity, a high level of communicative culture and creativity, and research potential. Besides, special components of professional culture of a teacher of an educational organization of the FPS of Russia are the specifics of manifestation of professional behavior, professional ethics, and professional activity.

Thus, we can conclude that professional culture of a teacher of an educational organization of the FPS of Russia is one of the socially significant indicators of a person's education, reflecting the totality of his/her spiritual and material values, the degree of creative self-realization and actualization. Its development in the modern socio-cultural environment is facilitated by both public and state conditions that cause the need for lifelong education and self-education, as well as psychological orientation of individual traits and qualities of a teacher.

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INFORMATION ABOUT THE AUTHOR

TAT'YANA V. KIRILLOVA – Doctor of Sciences (Pedagogy), Professor, Chief Researcher at the Department for Psychological Support of Professional Activity of Employees of the Penal System of the Center for Research on the Execution of Criminal Penalties and Psychological Support of Professional Activity of Penal System Employees of the Federal State Institution Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia, professor at the Department of Legal Psychology and Pedagogy of the Academy of the FPS of Russia, Ryazan, Russia, tatiana-kirillova@rambler.ru, https://orcid.org/0000-0001-8394-897X

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