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## МЕЖДУНАРОДНЫЙ ПЕНИТЕНЦИАРНЫЙ ЖУРНАЛ

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Научный журнал  
Издается с марта 2015 г.  
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Scientific journal  
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Triannually



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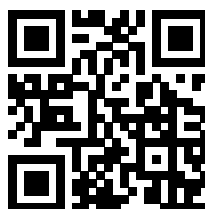
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## INTERNATIONAL PENITENTIARY JOURNAL

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# JOURNAL POLICY

## **Journal mission**

International penitentiary cooperation can and should help States to coordinate criminal and penal policy, practice of sentencing and execution of penalties, means, methods of treatment with convicts according to universally recognized principles and norms of international law, as well as standards developed over the years of cooperation in this field. International penitentiary journal is a dialogue platform for describing and discussing penitentiary systems' problems in all countries of the world. The publication is focused on the expansion of contacts between penitentiary systems of Russia and other States in scientific and practical fields. Such cooperation is important due to the need for mutual consideration of positive and other experience in the penitentiary sphere, joint efforts in ensuring human and social security, crime prevention, execution of criminal penalties, etc. The journal is not limited by only one direction of Penitentiary systems' activity. According to the Editorial Board's opinion, none of them can be considered secondary. For this reason, the journal focuses on any issues of penitentiary practice: the history of penitentiary bodies and institutions, problems of international standards application for treatment with prisoners, inter-sectoral research in the field of criminal penalties sentencing and execution, legal, psychological, pedagogical and economic foundations of penitentiary systems' development, ensuring the rule of law in their activities, personnel training for correctional institutions, etc.

## **Publication Frequency**

Triannually

## **Principles of editorial work**

scientifically proven approach to selection, review and publication placement;

free and open access to research results, used data, which contributes to increasing of global knowledge exchange;

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# ПОЛИТИКА ЖУРНАЛА

## Миссия журнала

Международное пенитенциарное сотрудничество может и должно способствовать государствам координировать уголовную, уголовно-исполнительную политику, практику назначения и исполнения наказаний, средства, методы обращения с осужденными с общепризнанными принципами и нормами международного права, а также стандартами, наработанными за годы взаимодействия в данной сфере. Международный пенитенциарный журнал – это диалоговая площадка для описания и обсуждения проблем пенитенциарных систем всех стран мира. Издание ориентировано на расширение контактов между пенитенциарными системами России и других государств в научной и практической областях, необходимость взаимного учета положительного и иного опыта в пенитенциарной сфере, объединение совместных усилий в обеспечении безопасности человека и общества, предупреждении преступлений, исполнении уголовных наказаний и пр. Журнал не ограничен каким-либо одним направлением деятельности пенитенциарных систем. По мнению редакции, ни одно из них не может быть признано второстепенным. В силу этого в журнале внимание уделяется любым вопросам пенитенциарной практики: истории пенитенциарных органов и учреждений, проблемам применения международных стандартов по обращению с заключенными, межатраслевыми исследованиям в области назначения и исполнения уголовных наказаний, правовым, психолого-педагогическим и экономическим основам пенитенциарных систем, обеспечению законности в их деятельности, подготовке кадров для исправительных учреждений и т. п.

## Периодичность

3 выпуска в год.

## Принципы работы редакции

научно обоснованный подход к отбору, рецензированию и размещению публикаций;

свободный открытый доступ к результатам исследований, использованным данным, который способствует увеличению глобального обмена знаниями;

соблюдение международных этических редакционных правил.

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The Editorial Board accepts articles by e-mail [editor62@yandex.ru](mailto:editor62@yandex.ru) in Russian or English, with the observance of the following requirements.

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Up to 10–12 words. Abbreviations and formulas in the title of an article are not allowed.

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## An abstract

250–400 words, determined by the content of the article. It includes the characteristics of the researched problem, objectives, research methods and materials of the study, as well as the results and main conclusions of the study. It is advisable to point out the main scientific result of the work. Unencrypted abbreviations, for the first time entered terms (including neologisms) are not allowed. For articles in Russian language it is recommended to use the Interstate standard 7.9–95 "Summary and abstract. General requirements".

## Keywords

5–10 words or phrases. The list of basic concepts and categories used to describe the problem under study.

## Main body of the article

*Structure.* The body of the text should be divided into meaningful sections with individual headings (1–5 words) to disclose the essence of this section. Every article should contain Conclusions, where the author(s) are expected to ground meaningful inferences. Implications for a future research might also find their place in Conclusions. The Editorial Board recommends using the IMRAD structure for the article. This structure is reference and can be adapted (expanded and (or) more detailed) depending on the characteristics and logic of the research.

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(социолого-криминологический и пенитенциарный аспекты)»

Dear colleagues!

New issue of our periodical contains works of authors from the People's Police Academy of the Ministry of Public Security of the Socialist Republic of Vietnam (Hanoi), Academy of the Ministry of Internal Affairs of the Republic of Belarus (Minsk), Kostanai Academy of the Ministry of Internal Affairs of the Republic of Kazakhstan named after Shyrakbek Kabybayev (Kostanay), Academy of the Federal Penitentiary Service of Russia (Ryazan).

The published research materials analyze the changes in the criminal and penal legislation of the Socialist Republic of Vietnam in 2019. A significant part of this comparative legal study is also devoted to the regulation of criminal liability and the procedure for the execution of sentences in relation to commercial legal entities in the Socialist Republic of Vietnam.

Colleagues from Belarus have prepared works that present the results of a study devoted to the issues of life imprisonment institution development processes in the Republic of Belarus. These articles focus on a comparative analysis of the researched problems' criminological and criminal-executive aspects, and also make suggestions for improving the execution of this type of punishment in the Republic of Belarus.

The work devoted to the analysis of disciplinary measures applied to convicts serving imprisonment under the legislation of the Republic of Kazakhstan and their classification deserves special attention. This paper substantiates a number of significant scientific provisions, as well as formulates a number of conclusions that are of potentially significant interest to the audience of our publication.

In the new issue of our journal, we also provided an opportunity to publish their works to young researchers (adjuncts) from the Academy of the Federal Penitentiary Service of Russia. Their articles contain research materials on the issues of ensuring the personal safety of convicts in places of deprivation of liberty, as well as convicts' work organization as one of the main means of their correction.

The editorial staff continues to work on promoting new scientific and educational publications published on the subject of penitentiary activity. This issue provides an overview of lectures course prepared by V.I. Ignatenko. "Antisocial lifestyle of juveniles and youth and ways to overcome it: concept, content, causes (socio-criminological and penitentiary aspects)", published jointly by the Moscow publishing house "Prospekt" and the Academy of the Federal Penitentiary Service of Russia in 2020.

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### Уважаемые коллеги!

Очередной номер нашего журнала содержит работы авторов из Народной полицейской академии Министерства общественной безопасности Социалистической Республики Вьетнам (г. Ханой), Академии Министерства внутренних дел Республики Беларусь (г. Минск), Костанайской академии Министерства внутренних дел Республики Казахстан имени Шракбека Кабылбаева (г. Костанай), Академии права и управления Федеральной службы исполнения наказаний (г. Рязань).

В публикуемых материалах исследований анализируются изменения уголовного и уголовно-исполнительного законодательства социалистической республики Вьетнам в 2019 г. Значительная часть данного сравнительно-правового исследования также посвящена вопросам регулирования уголовной ответственности и порядка исполнения наказаний в отношении коммерческих юридических лиц в Социалистической Республике Вьетнам.

Коллеги из Белоруссии подготовили работы, в которых представлены результаты исследования процессов развития института пожизненного заключения в республике Беларусь. В данных статьях сделан акцент на сравнительном анализе криминологических и уголовно-исполнительных аспектов анализируемого комплекса вопросов, также вносятся предложения по совершенствованию исполнения данного вида наказания в республике Беларусь.

Отдельного внимания заслуживает работа, посвященная анализу мер дисциплинарных взысканий, применяемые к осужденным, отбывающим лишение свободы по законодательству республики Казахстан и их классификации. В данной работе обоснован ряд существенных научных положений, а также сформулированы выводы, которые имеют потенциально значительный интерес для аудитории нашего издания.

В новом номере нашего журнала мы предоставили возможность опубликовать свои работы молодым исследователям (адъюнктам) из Академии права и управления Федеральной службы исполнения наказаний. Их статьи содержат материалы исследований вопросов обеспечения личной безопасности осужденных в местах лишения свободы, организации труда осужденных, как одного из основных средств их исправления.

Коллектив редакции продолжает работу по продвижению новых научных и учебных изданий, издаваемых по тематике исполнения наказаний. В данном номере представлен обзор курса лекций В. И. Игнатенко «Антиобщественный образ жизни несовершеннолетних и молодежи и пути его преодоления: понятие, содержание, причины (социолого-криминологический и пенитенциарный аспекты)», изданный совместно московским издательством «Проспект» и Академией ФСИН России в 2020 г.

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**Phung N. H., Le H. N., Skiba A. P.**

**Фунг Н. Х., Ле Х. Н., Скиба А. П.**

ON THE EXECUTION OF PUNISHMENTS  
AGAINST LEGAL ENTITIES AND OTHER CHANGES  
IN THE CRIMINAL AND PENAL LEGISLATION  
OF THE SOCIALIST REPUBLIC OF VIETNAM IN 2019

ОБ ИСПОЛНЕНИИ НАКАЗАНИЙ В ОТНОШЕНИИ  
ЮРИДИЧЕСКИХ ЛИЦ И ИНЫХ ИЗМЕНЕНИЯХ УГОЛОВНОГО  
И УГОЛОВНО-ИСПОЛНИТЕЛЬНОГО ЗАКОНОДАТЕЛЬСТВА  
СОЦИАЛИСТИЧЕСКОЙ РЕСПУБЛИКИ ВЬЕТНАМ В 2019 Г.

**Abstract.** The article is devoted to the changes in the Law on the execution of criminal penalties of the Socialist Republic of Vietnam and the Criminal Code of the Socialist Republic of Vietnam in 2019. The main focus is on the regulation of criminal liability and the procedure for punishments execution in respect of commercial legal entities. The following issues are also analyzed: the right of a seriously ill convict to request a medical examination; additions to the category of separately held convicts at the expense of homosexuals, transsexuals and persons with uncertain gender; specification of the legal status of those sentenced to imprisonment (ensuring their safety, realization of their right to freedom of conscience and religion, to get a job in a penitentiary institution, apply for early release from serving a sentence, etc.). It is concluded that the changes in the Criminal and Penal legislation of the Socialist Republic of Vietnam in 2019 increase the effectiveness of criminal penalties execution.

**Keywords:** Socialist Republic of Vietnam, execution of criminal penalties against legal entities, seriously ill convict, transsexual, legal status of convicts.

**Аннотация.** В статье рассматриваются изменения 2019 г. в Законе об исполнении уголовных наказаний Социалистической Республики Вьетнам и Уголовном кодексе Социалистической Республики Вьетнам. Основное внимание уделяется вопросам регулирования уголовной ответственности и порядка исполнения наказаний в отношении коммерческих юридических лиц. Анализу также подвергаются следующие проблемы: права тяжело больного осужденного ходатайствовать о проведении медицинского освидетельствования; дополнения категорий отдель-

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но содержащихся осужденных за счет гомосексуалистов, транссексуалов и лиц с неопределенным полом; конкретизации правового положения осужденных к лишению свободы (обеспечения их безопасности, реализации их права на свободу совести и вероисповедания, получения работы в пенитенциарном учреждении, ходатайство о досрочном освобождении от отбывания наказания и т. п.). Сделан вывод о том, что изменения 2019 г. уголовного и уголовно-исполнительного законодательства Социалистической Республики Вьетнам повышают эффективность исполнения уголовных наказаний.

**Ключевые слова:** Социалистическая Республика Вьетнам, исполнение уголовных наказаний в отношении юридических лиц, тяжело больной осужденный, транссексуал, правовое положение осужденных.

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Фунг, Н. Х. Об исполнении наказаний в отношении юридических лиц и иных изменениях уголовного и уголовно-исполнительного законодательства Социалистической Республики Вьетнам в 2019 г. / Н. Х. Фунг, Х. Н. Ле, А. П. Скиба // Международный пенитенциарный журнал. – 2020. – Т. 2(1–3), № 2. – С. 76–81. – DOI : 10.33463/2712-7737.2020.02(1-3).2.076-081.

Various problems of sentencing and execution of sentences, as well as early release from serving them in Vietnam, have recently been increasingly considered in the legal literature (Buy, M. Z. 2019, pp. 34–39; Stepanova, M. A. & Krekhovets, A. V. 2019, pp. 63–66; Phung, N. Kh. & Ngo, V. V. 2018, pp. 329–333; Krymov, A. A., Phung, N. Kh. & Skiba, A. P. 2018, pp. 143–149; Phung, N. Kh., LeTkh, M. Kh. & Skiba, A. P. 2019, pp. 165–169). In the Socialist Republic of Vietnam (Vietnam) the Law on the execution of criminal penalties currently consists of 16 chapters and 207 articles and in 2019 has undergone major changes, including on issues related to sentences execution against legal entities, as well as in the field of ensuring the legal status of convicts. These changes are similar with the spirit of the 2013 Constitution of Vietnam and the 2015 Criminal Code of Vietnam, and are aimed at eliminating shortcomings in the practice of institutions and bodies that carry out punishments, and are as follows:

- the procedure for punishments execution in respect of commercial legal entities was established;
- the procedure for early release of convicted persons from punishment was clarified and expanded;
- the activities of the Council for the execution of death sentences are specified, including in terms of interaction with other institutions and bodies, registration of materials for obtaining the remains of the executed, including the ashes of the cremated body;
- the powers of people's district committees and the command of military units to control and correction of convicted persons who are on probation under a suspended sentence or serving sentences not related to deprivation of liberty, etc. were supplemented.

### **The execution of criminal penalties in respect of commercial legal entities**

For the first time in the history of the country's criminal legislation, the criminal liability of legal entities was introduced in the Criminal Code of Vietnam in 2015. This issue is also discussed

in Russia (Ivanov, L. 2009, pp. 125–129; Kibal'nik, A. G., Volosyuk, P. V. & Demin, S. G. 2017; Kashuba, Yu. A. & Karibov, S. I. 2008). Chapter XI "Execution of a sentence against commercial legal entities", which contains 9 articles, provides: entry of judgment into legal force; general issues of sentence execution; rights and duties of commercial entities; issues of coercion in sentence execution; transfer of obligations on execution of sentence in case of reorganization of a commercial organization; the order of registration of the fact of punishment execution, etc. In addition, after receiving the decree on the entry into force of the sentence, the commercial organization must publish it on its website.

Materials on the execution of a sentence against a commercial legal entity must contain:

- sentence and other court decisions that entered into force;
- information about calling the legal representative of a commercial legal entity;
- written request to the relevant state authority about the activities of a commercial organization;
- report of a legal entity on the execution of a sentence;
- other documents containing information about the execution of the sentence.

In accordance with the changes in the legislation adopted on 2019, a commercial legal entity that was sentenced must:

- send a legal representative of the legal entity, when it called by the bodies that execute criminal penalties, except in cases of force majeure (natural disasters, epidemics, other emergencies, etc.);
- within 3 business days from the date the decision on sentence entry into force publish this decision on its website, at its head office and at the actual location of this commercial legal entity, and subsequently notify the relevant authorities and individuals about the execution of the requirements of the sentence, as well as other measures taken by the court;

– commercial legal entities whose activities are suspended for a certain period of time are required not to perform business operations in accordance with the court's verdict or other measures;

– commercial legal entities, that are prohibited from conducting business activities in certain areas (production of products, provision of services, etc.), do not have the right to carry them out during the period established by the court's verdict, which is calculated from the moment the verdict enters into force;

– commercial legal entities whose activities were stopped must fully comply with the court's verdict;

– commercial legal entities that are prohibited from raising capital are not allowed to perform such actions during the period established by the court's verdict, which is calculated from the moment the verdict enters into legal force;

– commercial legal entities must report the measures taken for the execution of the court's sentence in written form to the bodies that execute criminal penalties, the relevant state administration bodies, etc.

### **Other changes in the Law on execution of criminal penalties of Vietnam in 2019**

Firstly, a seriously ill convict can apply for a medical examination. This new legal provision means that a convicted person who has symptoms of severe mental illness or mental retardation can be examined by doctors, and the execution of the sentence is suspended by a court decision and a convicted person is sent to a medical facility for care and treatment. However, in the case of recovery of a convicted person on the basis of materials from the body executing the sentence, or the relevant medical institution by the decision of the court that previously issued the suspended sentence, it is resumed.

Secondly, the categories of convicts put separately from the rest of the convicted population were supplemented. Previously, they included: women; persons under 18 years of age; foreign citizens; patients with serious infectious diseases; those with severe mental

or other diseases that make prisoners incapacitated or unable to control their actions; often violating the rules of serving a sentence. In 2019 these categories of convicts were added: homosexuals, transsexuals, as well as persons with an uncertain gender. This issue is also relevant for Russia (Voronkova, E. O., Gorovaya, V. Yu., Gorovoy, S. A. & Starodubtseva, M. A. 2019, pp. 145–150; Skiba, A. P. 2019, pp. 77–85).

Thirdly, Article 27 "Rights and obligations of prisoners" specifies the legal status of those sentenced to imprisonment by adding their rights and obligations:

– to ensure the safety of life, physical integrity, property of prisoners, as well as respect for their honor and dignity;

– to know their rights and obligations, internal rules of penitentiary institutions and places of detention;

– food, clothing, medical care, communication with relatives, sending and receiving mail, physical activity, sports, receiving money by mail, cultural activities (art), receiving books, newspapers, magazines;

– the right to freedom of conscience and religion;

– to get a job in a penitentiary institution;

– the right for education and professional training;

– to maintain communication with the diplomatic missions and consular offices of their States;

– to meet with a legal representative (lawyer) and receive legal assistance, including for conducting civil-law transactions;

– to apply for early release from serving their sentence;

– to file complaints and appeal to the appropriate authorities about violations of the law;

– to conduct a medical examination on arrival at the penitentiary institution, etc.

In addition, in accordance with Article 51 of the Law on the execution of criminal penalties of Vietnam in the new version of 2019, prisoners are allowed to receive monetary



bonuses, as well as send money to relatives (no more than 2 times a month by mail). At the same time, employees of the administration of correctional institutions receive, open and check items received by mail in order to prevent the convicted person to get prohibited items.

Fourthly, the list of objects and things prohibited for storage by convicts was specified. These include: weapons, explosives, military equipment; flammable substances, radioactive substances, chemicals and poisons; narcotic substances and drugs that are addictive; alcohol, beer and other stimulants; items that can be used as weapons (belts, cords, threads, utensils, stones, glass, sharp objects, etc.); Vietnamese currency, foreign currency, gold, silver, precious stones, precious metals; identity documents (passport, diploma, etc.); technical means and electronic equipment (audio-visual players, telephones, radios, etc.); paintings, photographs, films with superstitious, reactionary and vicious content; maps, etc.

Fifthly, changes in the Law on the execution of criminal penalties in Vietnam adopted in 2019 also affected suspended sentences and non-custodial sentences. In particular, the duties of bodies that execute suspended sentences during the probation period and the procedure for attracting convicted persons to work for non-custodial sentences are clarified; probationers are allowed to apply for a reduction in the probation period once a year, and so on.

Thus, it can be stated that the 2019 amendments to the Law on the execution of criminal penalties and the Criminal Code of Vietnam increase the effectiveness of the execution of criminal penalties, as well as specify the legal status of convicts.

## References

Bui, M. Z. 2019, 'Execution of criminal penalties in Vietnam: theoretical and practical issues', in *IV International penitentiary forum "Crime, punishment, correction" (to the 140th anniversary of the Russian penal system and the 85th anniversary of the Academy of the Federal penitentiary service of Russia): collection of*

*speeches and reports of participants (Ryazan, November 20–22, 2019)*, in 10 vols, vol. 1, Materials of the plenary session, pp. 34–39, Academy of the FPS of Russia, Ryazan.

Stepanova, M. A. & Krekhovets, A. V. 2019, 'The system of penalties under the criminal law of the Socialist Republic of Vietnam', *Problems of law enforcement activity*, iss. 2, pp. 63–66.

Phung, N. H. & Ngo, V. V. 2018, 'The Institute of parole in various countries and its improvement in Vietnam', *Penal law*, vol. 13(1–4), iss. 3, pp. 329–333.

Krymov, A. A., Phung, N. H. & Skiba, A. P. 2018, 'On the structure and certain provisions of the Criminal-procedural Code of the Socialist Republic of Vietnam', *Bulletin of the Kuzbass Institute*, iss. 3, pp. 143–149.

Phung, N. H., LeThi, M. H. & Skiba, A. P. 2019, 'Capital punishment in the criminal law of Vietnam and several countries: some issues of regulation and law enforcement', *Penal law*, vol. 14(1–4), iss. 2, pp. 165–169.

Ivanov, L. 2009, 'The principle of guilt and public liability of a legal entity (on the issue of criminal liability of legal entities)', *Criminal law*, iss. 1, pp. 125–129.

Kibal'nik, A. G., Volosyuk, P. V. & Demin, S. G. 2017, *Questions of criminal liability of legal entities*, Urlitinform, Moscow.

Kashuba, Yu. A. & Karibov, S. I. 2008, *Doctrinal bases of criminal responsibility of legal organizations*, Rostov State University of Economics (RSUE), Rostov-on-Don.

Voronkova, E. O., Gorovaya, V. Yu., Gorovoy, S. A. & Starodubtseva, M. A. 2019, 'Statement of the problem for identifying the gender of a person as the basis for assigning criminal penalties', *Society and Security Insights*, vol. 2, iss. 4, pp. 145–150.

Skiba, A. P. 2019, 'About some directions of penal law development', *Bulletin of the Moscow State Regional University, Jurisprudence Series*, iss. 4, pp. 77–85.

## Библиографический список

Буй М. З. Исполнение уголовных наказаний во Вьетнаме: теоретические и прак-

тические вопросы // IV Международный пенитенциарный форум «Преступление, наказание, исправление» (к 140-летию уголовно-исполнительной системы России и 85-летию Академии ФСИН России) : сб. тез. выступлений и докладов участников (г. Рязань, 20–22 нояб. 2019 г.) : в 10 т. Рязань : Академия ФСИН России, 2019. Т. 1 : Материалы пленарного заседания. С. 34–39.

Степанова М. А., Креховец А. В. Система наказаний по уголовному законодательству Социалистической Республики Вьетнам // Проблемы правоохранительной деятельности. 2019. № 2. С. 63–66.

Фунг Н. Х., Нго В. В. Институт условно-досрочного освобождения в различных странах и его совершенствование во Вьетнаме // Уголовно-исполнительное право. 2018. Т. 13(1–4), № 3. С. 329–333.

Крымов А. А., Фунг Н. Х., Скиба А. П. К вопросу о структуре и некоторых положениях Уголовно-процессуального кодекса Социалистической Республики Вьетнам // Вестник Кузбасского института. 2018. № 3. С. 143–149.

Фунг Х. Н., ЛеТхи М. Х., Скиба А. П. Смертная казнь в уголовном праве Вьетнама и ряда стран: некоторые вопросы регу-

лирования и правоприменения // Уголовно-исполнительное право. 2019. Т. 14(1–4), № 2. С. 165–169.

Иванов Л. Принцип вины и публичная ответственность юридического лица (к вопросу об уголовной ответственности юридических лиц) // Уголовное право. 2009. № 1. С. 125–129.

Кибальник А. Г., Волосюк П. В., Демин С. Г. Вопросы уголовной ответственности юридических лиц : монография. М. : Юрлитинформ, 2017. 190 с.

Кашуба Ю. А., Карибов С. И. Доктринальные основы уголовной ответственности легальных организаций : монография. Ростов н/Д : Ростовский государственный экономический университет (РИНХ), 2008. 153 с.

Воронкова Е. О., Горовая В. Ю., Горовой С. А., Стародубцева М. А. Постановка проблемы идентификации пола лица как основания назначения уголовного наказания // Society and Security Insights. 2019. Т. 2, № 4. С. 145–150.

Скиба А. П. О некоторых направлениях развития уголовно-исполнительного права // Вестник Московского государственного областного университета. Сер. Юриспруденция. 2019. № 4. С. 77–85.

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## DEVELOPMENT OF THE INSTITUTION OF LIFE IMPRISONMENT IN THE REPUBLIC OF BELARUS: CRIMINOLOGICAL AND PENAL ASPECTS

## РАЗВИТИЕ ИНСТИТУТА ПОЖИЗНЕННОГО ЗАКЛЮЧЕНИЯ В РЕСПУБЛИКЕ БЕЛАРУСЬ: КРИМИНОЛОГИЧЕСКИЙ И УГОЛОВНО-ИСПОЛНИТЕЛЬНЫЙ АСПЕКТЫ

**Abstract.** The article is devoted to the issues related to the execution and serving of a life sentence, using the example of the Republic of Belarus. The criminological characteristics of convicts' personality are given, and separate proposals are made to optimize the correctional process. The authors note that the practice of punishment execution in the Republic of Belarus is generally similar to many foreign countries. Taking into account the questionnaire compiled by the authors, the characteristics of socio-demographic, moral-psychological, criminal-legal and social-role properties of convicts sentenced to life imprisonment were determined. Thus, the age of convicted persons is from 26 to 58 years. The largest number of people is of working age. Convicts, as a rule, have a low educational level. Most of the respondents are unmarried or divorced. Most convicts do not have children. The majority of them maintain socially useful relationships with relatives. The convicts have a positive attitude to matters of faith. A quarter of them did not work anywhere before the sentencing. Most of the convicts do not have chronic diseases. At the same time, 7.4% of respondents identified themselves as having mental behavioral disorders. For a significant part of the respondents, the served sentence is the first criminal record. The psychological attitude of prisoners to the committed crimes shows that in most cases they repent of what they did and blame only themselves for what happened. A large number of convicts draw attention to themselves, because they put the lack of perspective in the foreground. Taking into account the criminological characteristics, it is concluded that a person sentenced to life imprisonment is an atypical person, in respect of whom it is advisable to apply, along with established forms and methods of correctional influence, a special technique focused on overcoming a specific psychological mood and aimed at achieving the goals of criminal responsibility.

**Keywords:** penal system, convicted person, life imprisonment, correctional process, education, labor.

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**Аннотация.** В статье исследуются вопросы, связанные с исполнением и отбыванием наказания в виде пожизненного заключения, на примере Республики Беларусь. Приводится криминологическая характеристика личности осужденных, вносятся отдельные предложения по оптимизации исправительного процесса. Авторы отмечают тот факт, что практика исполнения рассматриваемого наказания в Республике Беларусь в целом имеет схожий характер со многими зарубежными странами. С учетом составленной авторами анкеты определены признаки социально-демографических, нравственно-психологических, уголовно-правовых и социально-ролевых свойств осужденных к пожизненному заключению. Так, возраст осужденных составляет от 26 до 58 лет. Наибольшее количество лиц находится в трудоспособном возрасте. Осужденные, как правило, имеют невысокий образовательный уровень. Большая часть опрошенных не состоят в браке либо разведены. У большинства осужденных нет детей. Преобладающая часть из них поддерживают социально-полезные связи с родственниками. К вопросам веры осужденные относятся положительно. Четверть из них до назначения наказания нигде не работали. Большая часть осужденных не имеют хронических заболеваний. При этом 7,4 % опрошенных определили у себя наличие психических поведенческих расстройств. Для значительной части опрошенных отбываемое наказание является первой судимостью. Психологическое отношение осужденных к совершенным преступлениям показывает, что в большинстве случаев они раскаиваются в содеянном и винят в случившемся лишь себя. Обращает на себя внимание большое количество осужденных, которые на первый план ставят отсутствие перспективы. С учетом криминологической характеристики сделан вывод о том, что осужденный к пожизненному заключению – нетипичная личность, в отношении которой целесообразно применять наряду с устоявшимися формами и методами исправительного воздействия особую методику, сосредоточенную на преодолении специфического психологического настроя и направленную на достижение целей уголовной ответственности.

**Ключевые слова:** уголовно-исполнительная система, осужденный, пожизненное заключение, исправительный процесс, образование, труд.

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The institution of life imprisonment is ambiguously perceived and interpreted by both penologists and criminologists throughout the world community. On the one hand, the imposition of one of the most severe punishments for committing, as a rule, serious and especially serious crimes; on the other hand, an alternative to the use of the death penalty for similar crimes.

Given liberalization and humanization of penal policy in many countries the issues of assignment and execution of this type of punishment are discussed by legislators and law enforcers; and from the standpoint of punishment necessity, and the possibility of its transformation into an urgent deprivation of liberty. The trend towards abolishing the death penalty (introducing a moratorium on it) and limiting its use has emerged as a result of the fact that many States use life imprisonment as the capital punishment. Although human rights standards relating to incarceration have changed radically, they are mostly focused on the general practice of keeping prisoners (convicts) in prisons, rather than specifically on the issue of life imprisonment.

For example, more than 20 years ago, the United Nations published a report that, for the first time, pointed out some of the problems and issues associated with life and long-term imprisonment at the international level. However, it is rightly noted that life imprisonment is a matter of concern both from the point of view of human rights and from the point of view of prison management. In many cases, it is too punitive, especially if it relates to non-violent crimes and is inconsistent with the principle of proportionality. In addition, life imprisonment without the right to parole raises the issue of cruel, inhuman or degrading treatment and contradicts the right to respect the principle of human dignity, excluding the possibility of its subsequent rehabilitation (Sawyer, W. & Wagner, P. 2020).

Turning to the research of world experts in the field of prison policy, we can not disagree with the positions that a long stay in isolation,

uncertainty about the possibility of parole and the period of time after which such release can be applied; strict conditions of cell detention do not have the best effect on those sentenced to life imprisonment, which will further affect their resocialization and return to society as full-fledged individuals.

Another important aspect is how the legislator and law enforcement officer view this type of punishment. Taking into account the public danger of the criminals' personality, the goal may be to physically isolate the latter from society forever. Or on the other hand – to make the convict suffer a negative impact of punishment, to correct his behavior as far as possible, and having made sure of the safety of the latter – to return to society. If the main goal lies only in isolation, then it is solved effectively. If the goal is the second, it is advisable to consider the features of serving this type of punishment through the prism of those measures that contribute to the correction of behavior and further resocialization.

The practice of execution of this punishment in the Republic of Belarus is generally similar to many foreign countries. Thus, the execution and serving of a sentence of life imprisonment is carried out in accordance with Part 1 of Article 172 of the Penal Code of the Republic of Belarus (hereinafter – the PC) in a correctional colony of special regime or in prison. In accordance with Part 2 of Article 172 of the PC, from the moment of convicts' arrival in the institution, their differentiated detention is established. Those sentenced to life imprisonment are placed separately from other categories of convicts who may be placed in special-regime correctional colonies under the law.

When allocating prisoners to cells, consideration is given not only to ensuring the personal safety of prisoners, but also to their psychological compatibility. Therefore, psychologists take part in the work of correctional institutions. After the administrative commission, the convicted person is assigned to one of the cells.

According to Part 2 of Article 173 of the PC, those sentenced to life imprisonment are held in special-regime correctional colony cell-type rooms, usually no more than two people. In practice, up to 4 people can be accommodated. It is not allowed to place in one cell convicted persons who have committed a crime in complicity; active participants in groups of negative orientation; persons with mental abnormalities, chronic diseases, as well as those who are inclined to commit escapes and attack representatives of the administration. Prisoners with infectious diseases are isolated and placed in a medical isolation unit.

On the other hand, the criminological study of the convict's personality allows us to detail the placement of convicts, taking into account the special characteristics of the latter. Thus, it is advisable to keep separate persons who are convicted for the first time and repeatedly; who have different subcultural status; who have committed crimes of a sexual or terrorist nature; who differ significantly in age, level of education, socially useful orientation while serving their sentence, etc.

Describing the legal basis of the institution, it is worth noting that the law regulates the procedure and conditions of detention in correctional institutions for the expenditure of funds contained in the personal accounts; conduct of visits; receive packages; organization of walks, self-employment (Article 173 of the PC). Those sentenced to life imprisonment are subject to the conditions of serving the sentence established by law for those sentenced to deprivation of liberty, taking into account the specifics of serving a life sentence.

At the same time, the criminological characteristics of individuals who have been sentenced to life imprisonment and are currently being placed in correctional institutions are also of interest. Criminological analysis of latest will take into account the peculiarities in the organization of educational and correctional process as a whole, optimization of employment.

Taking into account the questionnaire, we determined the characteristics of socio-demographic, moral-psychological, criminal-legal and social-role features.

Thus, the age of convicted persons is from 26 to 58 years. The largest number of people sentenced to life imprisonment is of the working age from 36 to 40 years. The total number of persons in this category is less than 1% in relation to all persons sentenced to imprisonment in the Republic of Belarus. In terms of citizenship, about 94% are citizens of the Belarusian state; less than 1% are citizens of Ukraine, about 3% are citizens of Russia, and about 1.5% do not have citizenship.

Those sentenced to life imprisonment usually have a low educational level. The relative majority of respondents (33.3%) have a general secondary education, and another 25.9% have a special secondary education at the technical college.

Most of the respondents who were sentenced to life imprisonment are not married (51.1%) or divorced (38.5%). At the same time, only 5.2% of respondents are married, and another 5.2% are widowers.

The majority of the surveyed convicts have no children (51.1%), 31.9% – one child, 12.6% – two children, 3.7% – three children; a single convict (0.7%) – four children. At the same time, the majority of those sentenced to life imprisonment (85.9%) maintain socially useful relationships with relatives, while 14.1% do not.

The convicts have a positive attitude to questions of faith (90.4% of the respondents define themselves as religious people).

Persons sentenced to life imprisonment are able-bodied citizens. However, 25.2% of the respondents did not work anywhere before their sentencing. The majority of the surveyed convicts (56.3%) were workers before serving their sentence, 15.6% were specialists, 2.2% were managers, and 0.7% were entrepreneurs.

Most of those sentenced to life imprisonment do not have chronic diseases (75.6%); 8.9% – suffer from alcoholism, 11.1% – tuberculosis, 1.5% – drug addiction, 3% – HIV infection. At

the same time, 7.4% of respondents identified themselves as having mental behavioral disorders.

With regard to the criminal-legal characteristics of these persons, 5.9% claim that they did not commit the crimes for which they were convicted, which indicates that it is impossible in the future for them to repent of their actions and actively participate in the correctional process.

With regard to the distribution of roles in criminal activity, 34.8% of the convicts were members of groups, about 28% were organizers, and 13% were accomplices. Most of the crimes were committed by a single convict (about 58%).

For a significant part of the respondents (31.9%), serving a sentence of life imprisonment is the first criminal record. At the same time, among the respondents there are persons who have more than 3 criminal records, some have more than 5, 6, 8 (10!) criminal records, which indicates not only an increased degree of public danger of these persons, but also a persistent criminal motivation.

At the time of the study, most of the interviewed prisoners (65.9%) had served more than 15 years. 25.9% of those convicts had previously been granted parole while serving their sentence. 46.7% of the respondents are obliged to compensate the victims by court verdict.

The psychological attitude of those convicts to crimes shows that most of them repent of what they did (68.1%), blame only themselves for what happened (57.8%). 83.7% of respondents say that if it was possible to take time back, they would not have committed a crime again.

At the time of crimes commission, the convicts had acceptable living conditions (48.9%) and very good (40.7%). The financial situation of convicts is assessed as satisfactory (40.7%) and good (23%).

In the process of serving a sentence of life imprisonment, the convicts' desire to survive prevails (35.6%). Attention is drawn to the

large number of convicts who put the lack of perspective in the foreground (31.01%). In the process of serving the sentence, the convicts' psychological mood changes: it depends on the circumstances, conflict with people around them, aggressive behavior of the latter; some express intentions to escape, some are in a calm or depressed state, apathy. The majority of convicts consider the sentence of life imprisonment as negative and cruel.

About 84% of the surveyed convicts make proposals to change the conditions of serving their sentences. So, among them: improving the efficiency of work; the ability to organize long-term visits with relatives; access to the Internet; free exit from the section within the local area. At the same time, 93.3% consider it possible to adapt to life in society after release from a sentence of life imprisonment.

Thus, taking into account the criminological characteristics of the person sentenced to life imprisonment, we see that this is an atypical person, in relation to which it is advisable to apply, along with the established forms and methods of corrective action, a special technique focused on overcoming not only a specific psychological mood, but also aimed at achieving the goals of criminal responsibility.

According to the Russian researcher D. V. Gorbach (2012, p. 35), the contingent of prisoners serving life sentences is extremely negative, aggressive and dangerous on socio-psychological and criminal-legal grounds. It is difficult to disagree with this statement, and it is true that most of those who are serving life sentences are not engaged in work because of their reluctance and are constantly in cells. They do not study, do not show a desire to learn new knowledge, and educational work is concentrated mainly in the form of conversations with priests, which makes it difficult to socialize and the process of correction.

In this regard, in our opinion, when organizing educational work with this category of persons, special attention should be paid to family ties, since it is the family that supports the convicted person while serving their



sentence and, as a rule, these ties are most often lost. In most cases, the family encourages positive behavior of prisoners by exercising social control. Convicts who have relatives are characterized on the positive side than those who are single or who have lost such ties over time. The innovations proposed by the Department of Corrections of the MIA of the Republic of Belarus – the introduction of video calls are positive in this regard (Correctional Institutions № 2, № 4).

Hypothetically, a person sentenced to life imprisonment can be released and can return to society. In this regard, the process of serving this type of sentence must be organized so that correctional tasks are implemented to form the readiness of those sentenced to life imprisonment to lead a law-abiding lifestyle after release. In this regard, experts in the field of international law recommend focusing on the aspects of resocialization. One of these elements may be employment, obtaining a new profession in demand.

However, at the present stage, those sentenced to life imprisonment are not included in the educational process (they are engaged exclusively in self-education if they wish), which makes it difficult to obtain a new profession. The organization of labor activity, which is reduced to low-professional work in the conditions of the cell (production of artificial flowers, cards, envelopes, etc.), does not fully perform all the functions of labor as it can be. In this regard, there is a reasonable proposal to optimize labor activity with the possibility of creating full-fledged jobs in the conditions of production (for example, locksmithing, turning production) and organizing training directly at the production site under the guidance of a master, foreman.

On the other hand, occupational therapy will not only help to overcome the apathy and aggressive attitude of convicts, but will also create an additional source of compensation for victims of crimes, as well as compensation for the costs of their maintenance during the period of serving their sentence.

In order to organize the work of persons sentenced to life imprisonment, we consider it is necessary to supplement the Internal Regulations of Correctional Institutions approved by Resolution No. 174 of the MIA of the Republic of Belarus (adopted on 20.10.2000) with Chapter 641, which defines the specifics of work use of persons sentenced to life imprisonment, which include provisions on the organization of work in conditions of imprisonment and professional training. In addition, it is advisable to supplement the PC with Article 1021, which includes follows:

*“Article 1021. Education and training of persons sentenced to imprisonment*

*1. Taking into account the available opportunities, the administration of a correctional institution should provide assistance to convicts in obtaining education.*

*2. Convicted persons serving a sentence of life imprisonment shall receive professional training directly at the workplace.”.*

Thus, today, taking into account the criminological characteristics of the person sentenced to life imprisonment, it is possible to make proposals in the aspect of employment of the latter, education of convicts, as well as maintaining relations with the outside world. This determines the urgent need to further develop these areas of activity, not only in terms of legal regulation, but also to create real conditions for their functioning. Thus, the goals of criminal responsibility will be achieved: correction of convicted persons, as well as general and private prevention.

## References

Sawyer, W. & Wagner, P. 2020, 'Mass Incarceration: The Whole Pie 2020', *Prison Policy Initiative*, 2020, 24 March, viewed 25 April 2020, <https://www.prisonpolicy.org/reports/pie2020.html>.

Gorbach, D. V. 2012, *Parole from serving a sentence of life imprisonment: PhD thesis (Law)*, Ryazan.

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**Библиографический список**

Sawyer, W. & Wagner, P. 2020, 'Mass Incarceration: The Whole Pie 2020', *Prison Policy Initiative*, 2020, 24 March, viewed 25 April 2020, <https://www.prisonpolicy.org/reports/pie2020.html>.

Горбач Д. В. Условно-досрочное освобождение от отбывания наказания в виде пожизненного лишения свободы : дис. ... канд. юрид. наук. Рязань, 2012. 164 с.

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## PROSPECTS OF LIFE PRISONING AS A KIND OF PUNISHMENT

## ПЕРСПЕКТИВЫ ПОЖИЗНЕННОГО ЗАКЛЮЧЕНИЯ КАК ВИДА НАКАЗАНИЯ

**Abstract.** The organization of a sentence execution of life imprisonment in the Republic of Belarus and life imprisonment in the Russian Federation are examined in the article. The legislation was analyzed, and the international experience of execution of these types of punishments was studied. The statistical data necessary for the analysis are provided. Proposals are made to improve the execution of a life sentence. Based on the research, the author comes to the conclusion that the sentence of life imprisonment has a large number of shortcomings that need to be solved. This makes it necessary to improve its execution or cancel this punishment. In order to increase the effectiveness of the considered punishment, the author suggests differentiating the approach to applying parole to prisoners sentenced to life prisoning: reduce the terms of possible release, provide for a gradual change in conditions (a system of social elevators), establish lifelong supervision of the behavior of convicts after release (in case of violation of the rules of supervision, the convict can be returned to a correctional institution for further serving a life sentence).

**Keywords:** life imprisonment, crime prevention, death penalty, correction, parole.

**Аннотация.** В статье исследуется организация исполнения наказания в виде пожизненного заключения в Республике Беларусь и пожизненного лишения свободы в Российской Федерации. Проведен анализ законодательства, изучен международный опыт исполнения данных видов наказаний. Приводятся необходимые для анализа статистические данные. Вносятся предложения по совершенствованию исполнения наказания в виде пожизненного заключения. На основе проведенного исследования автор приходит к выводу о том, что наказание в виде пожизненного заключения имеет большое количество недостатков, требующих решения. Это обуславливает необходимость совершенствования его исполнения либо отмены данного наказания. В целях повышения эффективности рассматриваемого наказания автор предлагает дифференцировать подход к применению досрочного освобождения от наказания к пожизненно осужденным: снизить сроки

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возможного освобождения, предусмотреть поэтапное изменение условий (система социальных лифтов), устанавливать пожизненный надзор за поведением осужденных после освобождения (в случае нарушения правил надзора осужденного могут вернуть в исправительное учреждение для дальнейшего отбывания пожизненного заключения).

**Ключевые слова:** пожизненное заключение, предупреждение преступлений, смертная казнь, исправление, досрочное освобождение.

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In the Republic of Belarus, one of the penalties is life imprisoning. In the Russian Federation there is a similar penalty – life imprisonment. In addition, the death penalty is applied in the Republic of Belarus, which is subject to a moratorium in the Russian Federation. The penalty of life imprisonment is popular all over the world, but in contrast to our countries its application has certain differences.

In accordance with article 172 of the Penal Code of the Republic of Belarus (hereinafter – the PC of the RB) convicts sentenced to life imprisonment and convicts whose death sentences by pardon were replaced by life imprisonment are put either in a correctional institution of special regime or into a prison. However, it should be noted that at least the first ten years of the term the convict is serving his sentence in the cell-type facility and only in case of observance of the established order of sentence and conscientious attitude to work can be transferred to the premises of the correctional institution of special regime. In the Russian Federation those sentenced to life imprisonment are placed in cells for the entire term.

Also, the Republic of Belarus and the Russian Federation provide for the possibility of parole for prisoners sentenced to life imprisonment: after 25 years of serving their sentence in accordance with Part 5 of Article 79 of the Criminal Code of the Russian Federation; in accordance with Part 4 of Article 58 of the Criminal Code of the Republic of Belarus (hereinafter – the CC of the RB), after 20 years the sentence of life imprisonment can be replaced by imprisonment for a term not exceeding 5 years. That is, in the Republic of Belarus a convicted person can be released in 20.5 years (since the minimum term of imprisonment in the Republic of Belarus is 6 months).

In the Republic of Belarus, more than 160 convicts serve life sentences ('In Belarus 160 people are serving life sentences', *TUT.BY*, 2019, 26 February). This is a small number in

the total number of people serving sentences. In the Russian Federation according to statistics (01. 08. 2019) 2015 convicts were serving sentences of life imprisonment and persons who had the death penalty sentenced to life imprisonment ('Life imprisonment in Russia', *Wikipedia is free encyclopedia*, 2020, 24 July). That is, in these two countries, the proportion of convicts who are assigned an exceptional penalty is insignificant.

In accordance with the legislation of the Republic of Belarus and the Russian Federation, correction and general and specific warnings are used as the purposes of applying punishment. Speaking about the purpose of correction in relation to life imprisonment, its existence raises a certain question, which we will discuss below. To a greater extent, there is still a general and private warning. As A. V. Shidlovskiy notes, with a life sentence "the goals of criminal responsibility assume... achieving the maximum preventive effect... as well as the corrective process minimized by law..." (Shidlovskiy, A. V. 2019, p. 97).

In the criminal legislation of the Republic of Belarus, as an alternative to life imprisonment, there are long terms of imprisonment: for some particularly serious crimes up to 25 years; for a set of sentences in accordance with Part 3 of Article of the CC of the RB up to 30 years. This period is sufficient for achieving preventive measures and organizing the correctional process in order to form a readiness to lead a law-abiding lifestyle. A convicted person serving even 30 years of imprisonment may realize that after a certain period of time, the conditions of serving the sentence may be changed, the institutions of early release, amnesty and pardon may be applied (for example, replacing the unserved part of the sentence with a milder punishment may be applied after serving at least two-thirds of the sentence). That is, the convicted person, theoretically, will be able to be released in 20 years (if an amnesty or pardon was applied then even earlier).

When long terms of imprisonment are imposed, convicts still have significant incentives to behave law-abiding both during the period of serving their sentence and after their release, which contributes to their correction. When serving a life sentence, convicts are aware of the fact that they are kept in correctional institutions until their death (currently, early release institutions are rarely applied to this category of convicts). Numerous studies show that the majority of those sentenced to life imprisonment consider the punishment unfair, disregard the rules of morality and life in society, are cruel, sadistic, suffer from mental disorders, etc. In other words, the majority of convicts are practically incapable to correction even after serving a long term, which, in fact, implies that the institutions of early release are not applied to them.

If we consider prevention as the purpose of applying life imprisonment, there are certain points of discussion. Thus, private prevention is certainly present, since the convicted person is serving a sentence all his life and has almost no opportunity to commit a new

crime (except for the institution in which he is located). In the case of general prevention, numerous studies noted that the presence of life imprisonment in the penal system either does not affect the level of crime, or has a negligible effect. Criminals (even before they are convicted) respond equally to both long prison terms and life sentences. In other words, most people perceive imprisonment for 20–30 years as a life sentence. This is also justified by the fact that the average age of a criminal serving a life sentence is more than 30 years. Therefore, a term of 30 years for the offender means that he will be released when he is about 60 years old or more, when he is already elderly. At the same time, the very fact that the term is limited in time (for example, 20 years) contributes to law-abiding behavior.

These judgments are supported by statistical data on crime in the Republic of Belarus presented in Table 1.

If we consider statistical data in the Russian Federation for the same period, we get the following data, shown in Table 2

Table 1

#### Number of registered serious and especially serious crimes in the Republic of Belarus

Year	Number of registered serious and especially serious crimes	Percentage of the total number of registered crimes
2005	20708	10.6
2010	12542	8.9
2011	11317	8.6
2012	8500	8.3
2013	9265	9.6
2014	10842	11.5
2015	12390	12.8
2016	12277	13.2
2017	11733	13.6
2018	11245	13.4
2019	10175	11.5

*Note.* The table is based on data from the official website of the Ministry of Internal Affairs of the Republic of Belarus, <https://www.mvd.gov.by/ru/page/statistika>, viewed 7 February 2020.

Table 2

**Number of registered serious and especially serious crimes in the Russian Federation**

Year	Number of registered serious and especially serious crimes	Percentage of the total number of registered crimes
2005	1076988	30.3
2010	684347	26.0
2011	607507	25.3
2012	569804	24.8
2013	537664	24.4
2014	531388	24.3
2015	519655	21.8
2016	457779	21.2
2017	437303	21.2
2018	448174	22.5
2019	494092	24.4

*Note.* The table is based on data from the official website of the Ministry of Internal Affairs of the Russian Federation, <https://мвд.рф/reports/item/19412450/>, viewed 8 February 2020.

Analysis of statistical data may indicate that the existence of life imprisonment and the death penalty in the system of punishments does not significantly affect the level of commission of serious and especially serious crimes. At the same time, it should be taken into account that in the Russian Federation only life imprisonment is applied, and in the Republic of Belarus the death penalty is also applied, and the dynamics remains approximately at the same level. In the Republic of Belarus, the increase in the level of commission of serious and especially serious crimes in 2014–2018 is mainly due to the change in criminal policy towards stricter treatment of crimes related to illicit trafficking in narcotic drugs, psychotropic substances, their precursors and analogues.

Considering prevention as the purpose of applying the death penalty, it is implemented more effectively, since the criminal is physically eliminated (private prevention is achieved “absolutely”), and the commission of particularly serious crimes is prevented by the fear of losing his life. Naturally, if we compare

the general prevention of life imprisonment and the death penalty, it is actually at the same level, since criminals when sentenced to both these punishments perceive them as “the end of life”. That is, their life plans are completely broken and can not be implemented in the future.

It should also be taken into account that the execution of a life sentence requires significant financial costs, since it is necessary to create appropriate institutions, a system of protection and supervision, etc.

There are certain problems with the organization of work of prisoners sentenced to life imprisonment, which is associated with their first time in cells (in the Russian Federation constantly). During the prison regime, it is possible to create production workshops, but there are a number of problematic issues:

firstly, they occupy a certain area of the prison (a separate cell) in which convicts could be placed;

secondly, the profitability of such workshops is usually lower than the factory-type production in correctional institutions;

thirdly, the organization of proceedings for life prisoners entails increased risks of their committing violations of the established order of serving their sentence, as well as crimes and suicides.

Based on the above, it should be noted the cost-effectiveness of applying a sentence of life imprisonment. It turns out that in comparison with incarceration, it is difficult to organize the work of those sentenced to life imprisonment (especially profitable), and the cost of maintenance is significant. For example, in the Russian Federation, approximately one billion Russian rubles are spent annually on the maintenance of life-sentence prisoners (Iksanov, R. A., Sultanbekova, E. L. & Kharisova, K. A. 2018, p. 202). That is, on average, about 500,000 Russian rubles per convicted person. At the same time, taking into account the salaries of employees in institutions (which in special regime institutions are significantly more than in other correctional institutions) where convicts are placed, this amount is approximately doubled (Iksanov, R. A., Sultanbekova, E. L. & Kharisova, K. A. 2018, p. 204–205). These calculations do not yet take into account current repairs, depreciation of buildings and structures, possible benefits from the employment of employees of institutions in the industry, and so on. In other words, this type of punishment is economically ineffective.

Thus, based on the achievement of the goals of criminal responsibility and economic efficiency, the sentence of life imprisonment has a large number of disadvantages that need to be addressed. All this makes it necessary either to improve its implementation or to cancel it. Thus, A. V. Shidlovskiy notes the need to apply a progressive system of punishment execution in relation to life prisoners (Shidlovskiy, A. V. 2019, p. 101). A similar opinion is expressed by A. A. Tit, who believes that it is necessary to further “divide the process of serving a sentence into stages that improve the situation of the convicted person” (Tit, A. A. 2019, p. 226). That is, the implementation of a system

of social lifts for them with a gradual change in the conditions of serving a sentence up to parole. To develop proposals for improving the execution of this type of punishment, it is necessary to refer to international experience.

Currently, some forms of life imprisonment are provided by criminal laws in about 75% of the world's countries (Shidlovskiy, A. V. 2019, p. 98). In some of them, it is “really” served for life, in some certain terms.

Many countries around the world have abandoned the use of life imprisonment. Thus, “Uruguay and Bosnia and Herzegovina refused this type of punishment” for the reason of ensuring the goal of social rehabilitation of convicts (Dikaeva, M. S. 2015, p. 391). There is no life sentence in Brazil, Croatia, Colombia, Portugal, Spain, Norway, etc. (Dikaeva, M. S. 2015, p. 101). In Greece, life imprisonment is defined as imprisonment for 25 years with the right to parole after 16 years, in the Federal Republic of Germany 25 years, the average term of served sentence is 17–18 years (Kornilova, T. V. 2018, p. 392). In Sweden, a convicted person can be released in 10 years, in Switzerland at least 15 years, in France 18 years. In the United States, depending on the state, those sentenced to life in prison can be released no earlier than 10 years later. In Canada, there are several options for life imprisonment with different terms of possible early release (3, 7, 10, 25 years). Early release is also applicable in Hungary, Finland, Australia, etc. (Gorbach, D. V. & Kutakov, N. N. 2017, p. 158).

If we study the positive experience of execution of a sentence of life imprisonment in other foreign countries, it is interesting to see the experience of Great Britain, where the right to early release of a convicted person is obtained after 14 years of serving the term. At the same time, a so-called license is signed with the convict before release, in which he agrees to lifelong supervision of his behavior (a probation officer is assigned) (Gorbach, D. V. & Kutakov, N. N. 2017, p. 157). This experience should be recognized as



positive due to the fact that “recidivism among this category of supervised persons is the lowest” (Kornilova, T. V. 2018, p. 392). Thus, the following options for improving the execution of a sentence of life imprisonment are presented:

1. Exclude life imprisonment from the system of punishments.

2. Differentiate the approach to the application of parole from punishment to life prisoners (reduce the terms of possible release, provide for a gradual change in conditions (a system of social elevators), establish lifelong supervision of behavior after release (in case of violation of the rules, a return to serving a life sentence should occur).

## References

‘In Belarus 160 people are serving life sentences’, *TUT.BY*, 2019, 26 February, viewed 30 January 2020, <https://news.tut.by/society/627735.html>.

‘Life imprisonment in Russia’, *Wikipedia is free encyclopedia*, 2020, 24 July, viewed 24 July 2020, [https://ru.wikipedia.org/wiki/Пожизненное\\_лишение\\_свободы\\_в\\_России](https://ru.wikipedia.org/wiki/Пожизненное_лишение_свободы_в_России).

Shidlovskiy, A. V. 2019, ‘Socio-legal nature of life imprisonment’, *Journal of the Belarusian State University, Law*, iss. 1, pp. 95–103.

‘Statistics of the MIA of the Republic of Belarus’, *Website of the Ministry of Internal Affairs of the Republic of Belarus*, viewed 7 February 2020, <https://www.mvd.gov.by/ru/page/statistika>.

‘Statistics of the MIA of the Russian Federation’, *Website of the Ministry of Internal Affairs of the Russian Federation*, viewed 8 February 2020, <https://мвд.рф/reports/item/19412450/>.

Iksanov, R. A., Sultanbekova, E. L. & Kharisova, K. A. 2018, ‘Economic feasibility of applying a sentence of life imprisonment’, *International journal of humanitarian and natural sciences, Law*, iss. 4, pp. 202–205.

Tit, A. A. 2019, ‘Parole for convicts sentenced to life imprisonment in the Republic of Belarus: prospects and feasibility of introduction’, in

Yu. P. Shkaplerov (ed.), *Fight against crime: theory and practice: abstracts of the VII International scientific and practical conference (Mogilev, April 5, 2019)*, pp. 224–226, Mogilev Institute of the MIA of the Republic of Belarus, Mogilev.

Dikaeva, M. S. 2015, ‘Appointment and execution of life imprisonment in Russia and foreign countries’, *Criminology: yesterday, today, tomorrow*, iss. 3, pp. 99–103.

Kornilova, T. V. 2018, ‘The concept and characteristic features of long-term prison sentences in foreign criminal law’, *Bulletin of Voronezh State University, Series Law*, iss. 3, pp. 387–394.

Gorbach, D. V. & Kutakov, N. N. 2017, ‘Comparative legal analysis of institutions of life imprisonment and parole in some foreign countries’, *Applied legal psychology*, iss. 1, pp. 155–159.

## Библиографический список

В Беларуси пожизненное заключение отбывают 160 человек // TUT. BY. 2019. 26 февр. URL: <https://news.tut.by/society/627735.html> (дата обращения: 30.01.2020).

Пожизненное лишение свободы в России // Википедия – свободная энциклопедия. 2020. 24 июля. URL: [https://ru.wikipedia.org/wiki/Пожизненное\\_лишение\\_свободы\\_в\\_России](https://ru.wikipedia.org/wiki/Пожизненное_лишение_свободы_в_России). (дата обращения: 24.07.2020).

Шидловский А. В. Социально-правовая природа наказания в виде пожизненного заключения // Журнал Белорусского государственного университета. Право. 2019. № 1. С. 95–103.

Статистика МВД Республики Беларусь // Сайт Министерства внутренних дел Республики Беларусь. URL: <https://www.mvd.gov.by/ru/page/statistika> (дата обращения: 07.02.2020).

Статистика МВД Российской Федерации // Сайт Министерства внутренних дел Российской Федерации. URL: <https://мвд.рф/reports/item/19412450/> (дата обращения: 08.02.2020).

Иксанов Р. А. , Султанбекова Э. Л. , Харисова К. А. Экономическая целесообразность применения мер наказания в виде пожизненного лишения свободы // Международный журнал гуманитарных и естественных наук. Право. 2018. № 4. С. 202–205.

Тит А. А. Условно-досрочное освобождение для осужденных к пожизненному заключению в Республике Беларусь: перспективы и целесообразность введения // Борьба с преступностью: теория и практика : тез. док. VII Междунар. науч.-практ. конф. (Могилев, 5 апр. 2019 г. ) / отв. ред. Ю. П. Шаплеров. Могилев : Могилевский институт Министерства внутренних дел Республики Беларусь, 2019. С. 224–226.

Дикаева М. С. Назначение и исполнение пожизненного лишения свободы в России и зарубежных странах // Криминология: вчера, сегодня, завтра. 2015. № 3. С. 99–103.

Корнилова Т. В. Понятие и характерные особенности наказаний в виде длительных сроков лишения свободы в зарубежном уголовном праве // Вестник Воронежского государственного университета. Сер. Право. 2018. № 3. С. 387–394.

Горбач Д. В. , Кутаков Н. Н. Сравнительно-правовой анализ институтов пожизненного лишения свободы и условно-досрочного освобождения от него в некоторых зарубежных странах // Прикладная юридическая психология. 2017. № 1. С. 155–159.

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DISCIPLINARY MEASURES  
APPLIED TO CONVICTED PERSONS  
SERVING IMPRISONMENT UNDER THE LEGISLATION  
OF THE REPUBLIC OF KAZAKHSTAN  
AND THEIR CLASSIFICATION

МЕРЫ ДИСЦИПЛИНАРНЫХ ВЗЫСКАНИЙ,  
ПРИМЕНЯЕМЫЕ К ОСУЖДЕННЫМ,  
ОТБЫВАЮЩИМ ЛИШЕНИЕ СВОБОДЫ,  
ПО ЗАКОНОДАТЕЛЬСТВУ РЕСПУБЛИКИ КАЗАХСТАН  
И ИХ КЛАССИФИКАЦИЯ

**Abstract.** Based on the analysis of the system of penalties provided for by the Penal legislation of the Republic of Kazakhstan, which can be applied to convicts serving imprisonment for violation of the order and conditions of serving a sentence, organizational and legal aspects of their application and taking into account existing theoretical developments, the author of the article attempts to classify them. The author concludes that all penalties provided for by the Penal legislation of the Republic of Kazakhstan, which can currently be applied to convicts serving imprisonment, are of a one-time nature and are not associated with long-term changes in the conditions of convicts' detention. Their classification was based on the following criteria:

categories of convicts to whom such measures can be applied, i.e. the degree of universality of their application (universal, limited-universal, specific and special penalties);

belonging to a particular branch of law (general, which in addition to penal legislation are provided for in other branches of law, and special penalties applied only to persons deprived of their liberty);

the level of misconduct of a convicted person serving a sentence of imprisonment (penalties applied for a single disciplinary offense; penalties that are a reaction to the continued negative behavior of the convicted person; penalties applied to convicted persons who have committed malicious violations of the established procedure for serving a sentence).

**Keywords:** institution of the Penal system, a person sentenced to deprivation of liberty, deprivation of liberty, disciplinary action, penalties.

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**Аннотация.** В статье на основе анализа предусмотренной уголовно-исполнительным законодательством Республики Казахстан системы мер взыскания, которые могут применяться к осужденным, отбывающим лишение свободы за нарушение порядка и условий отбывания наказания, организационно-правовых аспектов их применения и с учетом имеющихся теоретических разработок принята попытка осуществить их классификацию. Автор приходит к выводу о том, что все предусмотренные уголовно-исполнительным законодательством Республики Казахстан меры взыскания, которые в настоящее время можно применять к осужденным, отбывающим лишение свободы, носят разовый характер и не связаны с длительными изменениями условий содержания осужденных. За основу их классификации были взяты такие критерии, как:

категории, осужденных к которым такие меры могут применяться, то есть степень универсальности их применения (универсальные, ограниченно-универсальные, специфические и специальные меры взыскания);

принадлежность к той или отрасли права (общие, которые кроме уголовно-исполнительного законодательства предусмотрены и в других отраслях права, и специальные меры взыскания, применяемые только к лишенным свободы);

уровень неправомерного поведения осужденного, отбывающего лишение свободы (взыскания, применяемые за совершение единичного дисциплинарного проступка; взыскания, являющиеся реакцией на продолжающееся отрицательное поведение осужденного; применяемые в отношении осужденных совершивших злостные нарушения установленного порядка отбывания наказания).

**Ключевые слова:** учреждение уголовно-исполнительной системы, осужденный к лишению свободы лишение свободы, дисциплинарное воздействие, меры взыскания.

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When executing a criminal sentence in the form of deprivation of liberty, one of the tasks of Institutions of the Penal system (hereinafter – the Institution) is to strengthen law, order and discipline among persons serving this sentence by various organizational, legal and other means. The norms of the Penal legislation provide for special rules of conduct among convicted persons serving imprisonment, which are enforced by a combination of necessary means, methods and measures.

Among them, an important place belongs to disciplinary measures, which, as noted by V. N. Chorny and S. N. Smirnov, are a response of the Institution's administration to violations of the established order of serving a sentence (Chorny, V. N. 2012, pp. 4–5; Smirnov, S. N. 2012, p. 4). The implementation of disciplinary responsibility of convicted persons is also a measure of punishment that can be applied to convicted persons.

In accordance with Part 1 of Article 131 of the Penal Code of the Republic of Kazakhstan (hereinafter – the PC of the RK), for violation of the established order and conditions of serving a sentence, the following penalties may be applied to convicted persons serving a sentence of imprisonment: warning; reprimand; placement in a disciplinary isolator (hereinafter – DISO) for up to 15 days; the solitary cell for up to 4 months. In addition the cancellation of the right to stay outside the dormitory and the prohibition to leave the territory of the Institution in their free time, in both cases, for a period of up to 30 days, can also be applied to convicted persons serving their sentence in a minimum security institution (Part 2 of Article 131 of the PC of the RK).

In turn, under Part 3 of Article 154 of the PC of the RK the following penalties may be applied to juvenile convicts, who are serving a sentence of imprisonment for violating the order of serving a sentence: warning; reprimand; severe reprimand; placement in the room for temporary isolation for up to 72 hours. At the same time, it should be noted that penalties are applied to persons between the ages

of 18 and 21 who are serving sentences in medium-security institutions for the detention of juveniles for violations of the order and conditions of serving a sentence provided for in Part 1 of Article 131 of the PC of the RK (Part 5 of Article 154 of the PC of the RK).

These norms of the PC of the RK provide an exhaustive list of penalties that can be applied to convicted persons serving imprisonment. In this case the current PC of the RK, unlike the PC of the RK adopted in 1997, the legislator refused to include in the system penalties that can be applied to this category of convicts, disciplinary measures related to changes in the conditions of serving a sentence in the framework of a progressive system of serving imprisonment (in particular, the transfer from one condition of serving a sentence to another within one institution or to another type of institution). In addition, the following types of penalties were excluded from the system: placement in a penal isolation cell, transfer of malicious violators of the established order of serving a sentence to a cell-type room; placement of juvenile convicts in a DISO and deprivation of their right to watch movies for a month.

However, when listing the types of disciplinary penalties in the norms of the PC of the RK, the legislator does not classify them. The classification of these measures is quite important in the legal regulation of their application. Thus, S. S. Alekseev, noting the importance and significance of classification, emphasizes that the classification of certain objects and phenomena is important not only for the primary processing, ordering of the relevant material, but also makes it possible to identify new and qualitative features of these objects and phenomena when determining its criteria (Alekseev, S. S. 1987, p. 16).

At the same time, various variants of penalties classification, applied to convicted persons serving imprisonment, were proposed in the legal literature. First of all, it is necessary to agree with S. N. Smirnov and E. V. Lyadov that these penalties can be divided into

general and special measures depending on their belonging to a particular branch of law (Kalinin, Yu. I. (ed.) 2013, p. 342). In addition to specific penalties, the rules of the PC of the RK contain such penalties, which are used not only against convicted persons serving their imprisonment, but under other branches of law (administrative, labor), for example, a fine, a reprimand, a severe reprimand.

Penalties applied to convicted persons serving imprisonment can be classified according to their severity. But in the legal literature, different points of view were expressed on this issue. Depending on the degree of their severity N. A. Struchkov, Yu. M. Tkachevskiy, A. S. Mikhlin, I. S. Samoshenko and some others suggested dividing all penalties into two groups. In the first group they include those that are applied to convicts of single offenses, are of a precautionary nature and do not entail a long-term change in the conditions of serving a sentence. The penalties assigned by them to the second group are related to changes in the conditions of serving sentences of convicted persons, with the transfer of convicts to another institution, which is why they entail a complex change in the conditions of detention from the best to the worst (Babayan, S. L. 2003, pp. 162–163; Fedyaev, A. E. 2005, p. 35).

According to A. S. Sevryugin and I. A. Vodolaz, the set of disciplinary sanctions by their legal nature, based on the degree of severity, consists of 3 structural groups. The first group includes reprimands, placement in a penal isolation cell, and others that do not significantly change the legal status of convicts. The second group involves a transfer to a cell-type room and a solitary cell and involves a long-term change in the conditions of detention within the same institution. The third group includes penalties related to changing the conditions of detention by transferring to other institutions (Sevryugin, A. S. & Vodolaz, I. A. 1980, pp. 7–8).

In turn, G. A. Firsov divided all penalties into four groups, taking into account the classification of violations of the regime. In

his opinion, penalties of the first group should be imposed for violations of the regime that are not “serious” and committed by a person who is characterized positively. Penalties of the second group can be imposed for “serious” and “less serious” violations of the regime, committed by a person who has not lifted penalties for previously committed violations, but are not classified as malicious violators of the regime. Penalties of the third group can be imposed on malicious violators of the regime who have previously been subject to penalties and have again committed “serious” or “less serious” violations. Penalties of the fourth group are intended for malicious violators of the regime, and are carried out in case of failure to apply other measures of influence, including penalties of the third group (Firsov, G. A. 1979, p. 19).

Based on this classification, A. E. Fedyaev offered his own version of the division of penalties that can be applied to convicted persons serving prison sentences, and it, in his opinion, should look like this: a) measures not related to the degree of internal isolation; b) measures related to the minimum degree of internal isolation; c) measures related to the average degree of internal isolation; d) measures related to the maximum degree of internal isolation (Fedyaev, A. E. 2005, p. 38).

In general, agreeing with the possibility of qualifying penalties based on their severity, depending on the proposed criteria, but, firstly, that as already noted, at present, the Kazakhstan legislator refused to include in their list such as those that would be associated with elements of a progressive system of serving prison sentences (transfer from one condition of serving a sentence to another within the same institution, transfer to an institution with a higher level of security).

Secondly, based on the fact that the PC of the RK does not divide disciplinary offenses into “serious” and “less serious”, in our opinion, the classification of penalties, depending on their severity, which is proposed by P. G. Ponomarev, is more acceptable. It divides

punitive measures into two main groups: punitive measures that are of a one-time nature or last for a relatively short period, and punitive measures that involve a long-term change in the order and conditions of convicts' detention (Seliverstov, V. I. (ed.) 2001, p. 354).

In this regard, penalties that can be applied to convicted persons, who are serving a sentence of imprisonment, provided for in Articles 131 and 154 of the PC of the RK, depending on their severity, can be divided into two groups. The first group includes penalties that are of a one-time nature and are not related to changes in the legal status of convicts (warning; reprimand; strict reprimand).

The second group includes penalties that entail significant restrictions on the convict's freedom of movement, both within the institution and outside it, as well as increased isolation, i. e. those that are to a certain extent associated with changes in the legal status of convicts. These penalties include: placing convicted adults in DISO and transferring them to solitary cells; revoking the right to live outside the dormitory for convicted persons who are serving their sentence in a minimum security facility or prohibiting them from leaving the facility in their free time.

In addition to the above-mentioned classification of penalties applied to convicted persons serving imprisonment, they can also be subdivided depending on the level of their misconduct. On this basis, we can distinguish three groups of them. The first category includes penalties applied for a single disciplinary offense. In this case, in accordance with Part 3 of Article 130 of the PC of the RK, the convicted person is recognized as a violator of the established order of serving a sentence.

The second category includes penalties that are a reaction to the continued negative behavior of the convicted person. Such penalties include those imposed on a convicted person who has an outstanding or unpaid penalty imposed for a previously committed disciplinary offense. At the same time, if two or more penalties are imposed on a convicted

person within 6 months, with the exception of placement in DISO or transfer to a solitary cell, then he is recognized as a systematic violator of the established order of serving the sentence (Part 3 of Article 130 of the PC of the RK).

The third group of penalties in this classification includes those that are applied to convicted persons who have committed malicious violations of the established procedure for serving a sentence. This is due to the fact that these violations differ, firstly, in an increased degree of danger, entailing the infliction of particularly serious negative consequences (harm) to protective penal relations. Secondly, a malicious violation is the result of a deliberate disciplinary offense (Isaev, S. V. & Sitnikov, G. V. (comp.) 2015, p. 25).

The list of violations of the established procedure for serving imprisonment that are malicious is described in Part 2 of Article 130 of the PC of the RK. At the same time, the concept of malicious violation of the order of serving a sentence, in this case, is based on two features. In one case – a single serious misdemeanor, and in the other – repeated commission within 6 months of violation the established order of serving a sentence, for which the convicted person was subject to punishment in the form of placement in DISO or transfer to a solitary cell.

In turn, juvenile convicts serving a deprivation of liberty committed a willful violation stipulated by Part 2 of Article 154 of the PC of the RK recognized as malicious violators of the established order of serving punishment under condition of applying them sanction in the form of strict reprimand twice or more (Part 2 of Article 154 of the PC of the RK). In this case, the convict who committed a malicious violation of the established order of serving a punishment in the form of imprisonment, in both cases, recognized as a malicious violator, simultaneously with the imposition on him of the penalty for committing the last of a disciplinary offense by decision of the head of the institution (Part 4 of Article 130, Part 4 of Article 154 of the PC of the RK).

However, in the legal literature, the possibility of determining a malicious violation, in fact the repeated commission of a violation, is doubted by some authors, since in this case, in their opinion, the basis of the malicious nature is not the severity of the offense, but the severity of the disciplinary penalty. And, as they note, in practice, this can lead to the fact that, for example, the convicted person may be recognized as a malicious violator of the established order of serving the sentence for repeated smoking in a place not designated for this purpose, careless making of the bed, being late in service or any other minor offense (Babayan, S. L. 2003, p. 169; Epaneshnikov, V. S. & Kozachenko, V. R. 1996, pp. 63–65; Kalinin, Yu. I. (ed.) 2006, p. 259).

But we can hardly agree with this opinion. In our case, the legislator, in particular, in Part 2 of Article 130 of the PC of the RK, when referring to a malicious violation of the established order of serving a sentence, established two conditions: first, only “repeated similar violation” is recognized as such, and secondly, “for which the convicted person was subjected to a penalty of being placed in a DISO or transferred to a solitary cell for 6 months”. At the same time, currently these penalties are not applied in the institutions of the Republic of Kazakhstan in practice for “minor offenses”.

Thus, according to the guidelines for application of incentives and disciplinary penalties made by the Committee of the Penal system of the MIA of the Republic of Kazakhstan, convicts in institutions of the Penal system are recommended (if they committed a willful violation, and there are circumstances mitigating their guilt) to be imposed a more lenient form of punishment than the placement in DISO, for example, in the form of reprimands. The circumstances, mitigating the guilt of the convicted person for a violation of the established order of serving punishment, are: the violation occurred for the first time; convicts' prevention of harmful consequences of the violation (voluntary compensation or elimination of the caused harm); the sincere repentance of

the committed violation, confirmed by a written explanation of the convict; no violations within 1 year and more, etc.

A convicted person is subject to placement in DISO, if from the date of the reprimand, within 3 months, without any circumstances mitigating his guilt, he again commits a violation of the established order for serving a sentence. If the convicted person continues to admit the facts of violation within 3 months from the date of release from DISO, he is subject to re-placement in it.

It is proposed the following algorithm for penalties application in the form of placement in DISO, taking into account the repayment of penalty after 6 months: first time placement of convicts in DISO for up to 7 seven days; second time for a period of 7 to 15 days (*Methodological recommendations on the use of incentives and imposition of disciplinary penalties for convicted persons in institutions of the penal system* 2019, pp. 8–10). In turn, in accordance with Part 7 of Article 132 of the PC of the RK, the application of penalties in the form of transfer to a solitary cell are allowed only in respect of a convicted person who has a penalty in the form of placement in DISO for a previous violation of the established order of serving a sentence. In addition, in order to verify the validity and legality of applying any penalty to a convicted person, a copy of the decision on its imposition must be sent to the Prosecutor no later than the next business day (Part 3 of Article 131 of the PC of the RK).

Thus, we can say that the main characteristics of malicious disciplinary misconduct are:

firstly, it is a single serious offense, i. e. committed in a rude and audacious form, which entails significant negative consequences;

secondly, this is a multiplicity of violations, i. e. a repeated homogeneous violation, for which the convicted person was subjected to punishment in the form of placement in a DISO or transfer to a solitary cell for 6 months, and juveniles under the condition of imposing on them penalties in the form of a strict reprimand two or more times. The repeated violation of



the established order of serving a sentence manifests itself in a stubborn refusal of the convict to abide the rules and conditions of the sentence, and the failure of previous measures of disciplinary influence.

In our opinion, penalties applied to convicted persons serving a sentence of imprisonment can also be classified according to the categories of convicted persons, to which they can be applied, i. e. by the degree of universality of their application. At the same time, the analysis of the norms of the PC of the RK on penalties and the procedure for their application showed that they can be classified into the following groups based on this feature.

1. Universal, i. e. that can be applied to all convicted persons. Such measures include a warning and a reprimand.

2. Restricted-universal. However, the limitation is that the norms of the PC of the RK do not allow their application to certain categories of convicts. These penalties include: placement in a DISO and transfer to a solitary cell. This is due to the fact that:

first, in accordance with Part 8 of Article 133 and Part 3 of Article 154 of the PC of the RK, convicted women with infants at the children's home, women are exempt from work due to pregnancy and childbirth, and juveniles are not transferred to solitary cells and not placed in DISO;

second, these penalties do not apply to certain categories of convicts who suffer from certain diseases, because in accordance with Part 7 of Article 133 of the PC of the RK, convicts can be placed in a prison and transferred to a solitary cell only after a medical examination for the possibility of being there.

3. Specific penalties that can only be applied to persons serving sentences in minimum security institutions. These penalties include: cancellation of the right to live outside the dormitory with their families on a rented or private residential area within the locality where the institution is located, and prohibition of leaving the territory of the institution in

their free time (Part 2 of Article 131, Part 4 of Article 143 of the PC of the RK).

4. Special punitive measures that can only be applied to convicted minors who are serving a sentence of imprisonment. Such penalties include: a strict reprimand and placement in premises for temporary isolation (Part 3 of Article 154 of the PC of the RK).

Thus, we can state that all the penalties contained in the PC of the RK, which can currently be applied to prisoners serving imprisonment, are of a one-time nature, and are not associated with long-term changes in the conditions of prisoners' detention. However, they can be divided into certain groups, depending on a particular classification feature.

So, depending on the branch of the law, these penalties can be divided into general, i. e. such that in addition to the penal legislation are provided for other fields of law; and specific, i. e. that apply only to convicted persons who are serving a sentence of imprisonment.

Depending on the severity, these measures can also be divided into two groups. The first group includes penalties that are of a one-time nature and are not related to changes in the legal status of convicts. The second include penalties, the application of which entails a significant restriction on the freedom of convicts' movement, both within the institution and outside it, as well as increasing their isolation, i. e. those that, to a certain extent, are related to changes in their legal status.

Depending on the level of misconduct of a convicted person serving a sentence of imprisonment, there are three groups of penalties. The first category includes penalties applied for a single disciplinary offense. The second category includes penalties that are a reaction to the continued negative behavior of the convicted person, i. e. those imposed on the convicted person who has not repaid the penalty imposed for a previously committed disciplinary offense. The third category includes penalties applied to convicted persons, who have committed malicious violations of the established order of serving a sentence.

At the same time, a malicious disciplinary offense can be expressed as in the commission of a single serious offense or in the multiplicity of committed violations.

Penalties, applied to convicted persons serving imprisonment, can be classified into four groups according to the degree of universality: universal, which can be applied to all convicts; limited-universal, i. e. those that the law prohibits to apply to specific categories of convicts; specific, applicable only to persons serving sentences in minimum security institutions; special, applicable only to juveniles serving sentences of imprisonment.

## References

Chorny, V. N. 2012, *Disciplinary practices and measures in European prisons*, Academy of the FPS of Russia, Ryazan.

Smirnov, S. N. 2012, *Penalties applied to convicted persons, persons deprived of their liberty and the procedure for their implementation*, Academy of the FPS of Russia, Ryazan.

Alekseev, S. S. 1987, 'Legal means: problem statement, concepts, classification', *Soviet State and Law*, iss. 6, pp. 12–19.

Kalinin, Yu. I. (ed.) 2013, *Penal law. Special part*, Academy of the FPS of Russia, Ryazan.

Babayan, S. L. 2003, *Legal regulation of the use of incentives and penalties in the educational impact on prisoners sentenced to imprisonment: PhD thesis (Law)*, Ryazan.

Fedyaev, A. E. 2005, *Penalties applied to convicted persons serving their sentence in correctional institutions of the Russian Federation, PhD thesis (Law)*, Omsk.

Sevryugin, A. S. & Vodolaz, I. A. 1980, *Analysis of disciplinary practices in the correctional labor colony group*, RHS of the MIA of Russia, Ryazan.

Firsov, G. A. 1979, *Penalties applied to convicted persons who maliciously violate requirements of the regime in the correctional labor colony*, Research Institute of the MIA of the USSR, Moscow.

Seliverstov, V. I. (ed.) 2001, *Penal law of Russia*, Norma, Moscow.

Isaev, S. V. & Sitnikov, G. V. (comp.) 2015, *Disciplinary liability of convicted persons serving their sentence in correctional institutions of the Russian Federation*, Perm regional human rights center, Perm.

Epaneshnikov, V. S. & Kozachenko, V. R. 1996, *Disciplinary measures of influence on persons sentenced to imprisonment*, Ufa.

Kalinin, Yu. I. (ed.) 2006, *Penal law. Special part*, Logos, Moscow.

*Methodological recommendations on the use of incentives and imposition of disciplinary penalties for convicted persons in institutions of the penal system* 2019, Astana.

## Библиографический список

Чорный В. Н. Дисциплинарная практика и дисциплинарные меры в тюрьмах европейских государств. Рязань : Академия ФСИН России, 2012. 50 с.

Смирнов С. Н. Меры взыскания, применяемые к осужденным, лишенным свободы и порядок их реализации. Рязань : Академия ФСИН России, 2012. 37 с.

Алексеев С. С. Правовые средства: постановка проблемы, понятия, классификация // Советское государство и право. 1987. № 6. С. 12–19.

Уголовно-исполнительное право. Особенная часть / под общ. ред. Ю. И. Калинина. Рязань : Академия ФСИН России, 2013. 822 с.

Бабаян С. Л. Правовое регулирование применения мер поощрения и взыскания в воспитательном воздействии на осужденных к лишению свободы : дис. ... канд. юрид. наук. Рязань, 2003. 264 с.

Федяев А. Е. Меры взыскания, применяемые к осужденным, отбывающим наказание в исправительных учреждениях Российской Федерации : дис. ... канд. юрид. наук. Омск, 2005. 23 с.

Севрюгин А. С. , Водолаз И. А. Анализ дисциплинарной практики в отряде ИТК. Рязань : РВШ МВД России, 1980. 37 с.

Фирсов Г. А. Меры взыскания, применяемые к осужденным, злостно нарушающим требования режима в ИТК. М. : ВНИИ МВД СССР, 1979. 102 с.

Уголовно-исполнительное право России / под ред. В. И. Селиверстова. М., 2001. 452 с.

Исаев С. В. , Ситников Г. В. Дисциплинарная ответственность осужденных, отбывающих наказание в исправительных учреждениях Российской Федерации. Пермь : Пермский региональный правозащитный центр, 2015. 68 с.

Епанешников В. С. , Козаченко Б. П. Дисциплинарные меры воздействия на осужденных к лишению свободы. Уфа, 1996. 196 с.

Уголовно-исполнительное право. Особенная часть / под общ. ред. Ю. И. Калинина. М. : Логос, 2006. 600 с.

Методические рекомендации к применению поощрений и наложению дисциплинарных взысканий, осужденным в учреждениях уголовно-исполнительной системы. Астана, 2019. 18 с.

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## ENSURING THE PERSONAL SECURITY OF PRISONERS IN PLACES OF DEPRIVATION OF LIBERTY: SOME OF THE REGULATORY ISSUES

## ОБЕСПЕЧЕНИЕ ЛИЧНОЙ БЕЗОПАСНОСТИ ОСУЖДЕННЫХ В МЕСТАХ ЛИШЕНИЯ СВОБОДЫ: НЕКОТОРЫЕ ВОПРОСЫ РЕГУЛИРОВАНИЯ

**Abstract.** In this article the author considers ensuring the personal security of a convicted person who is in prison as a necessary condition for full, comprehensive observance and enforcement of human and civil rights and freedoms. The author analyzes the concept of “personal security of convicts”, as well as examines the legal framework governing this activity. At present, issues of ensuring the personal safety of prisoners in places of deprivation of liberty are becoming increasingly relevant, since crime in institutions of the penal system is one of the most dangerous criminogenic factors. Currently, in places of isolation there is a risk of committing illegal acts on the part of the convicts themselves, as well as on the part of other persons who visit such institutions for various reasons. The author concludes that convicts' security in correctional institutions is a multidimensional activity and contains many factors. Security in correctional institutions is provided by the employees with mandatory interaction with other law enforcement and government agencies. In order for the state, represented by institutions and bodies of the Federal Penitentiary Service of Russia, to perform its direct duty to ensure the safety of convicts, it is necessary: constant and enhanced supervision of these persons; strict observance by convicts of the established rules in correctional institutions, the procedure for applying incentives and penalties to them; conducting educational activities; transferring convicts to a safe place, etc. All these measures are aimed exclusively at ensuring human and civil rights and freedoms in places of detention, which in turn is an additional factor that has a positive impact on the development of the state and society.

**Keywords:** state, convict, duty, correctional institution, personal security, problems of legal regulation, society, personality.

**Аннотация.** В настоящей статье автор рассматривает обеспечение личной безопасности осужденного, находящегося в местах лишения свободы, как необ-

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ходимое условие полного, всестороннего соблюдения и исполнения прав и свобод человека и гражданина. Проводится анализ понятия «личная безопасность осужденных», а также исследуется нормативно-правовая база, регламентирующая данную деятельность. В настоящее время вопросы обеспечения личной безопасности осужденных в местах лишения свободы приобретают все большую актуальность, так как преступность в учреждениях уголовно-исполнительной системы является одним из опаснейших криминогенных факторов. В настоящее время в местах изоляции имеет место риск совершения противоправных деяний как со стороны самих осужденных, так и со стороны иных лиц, посещающих такие учреждения по разным причинам. Автор приходит к выводу о том, что безопасность осужденных в исправительных учреждениях является многоаспектной деятельностью и содержит в себе множество факторов. Безопасность в исправительных учреждениях обеспечивается силами самих сотрудников при обязательном взаимодействии с иными правоохранительными и иными государственными органами. Для исполнения государством в лице учреждений и органов ФСИН России своей прямой обязанности по обеспечению безопасности осужденных необходимы: постоянный и усиленный надзор за данными лицами; строгое соблюдение осужденными установленного распорядка в исправительных учреждениях, порядка применения к ним мер поощрения и взыскания; проведение мероприятий воспитательного характера; перевод осужденного в безопасное место и пр. Все эти меры направлены исключительно на обеспечение прав и свобод человека и гражданина в местах лишения свободы, что в свою очередь является дополнительным фактором, положительно сказывающимся на развитии государства и общества.

**Ключевые слова:** государство, осужденный, обязанность, исправительное учреждение, личная безопасность, проблемы правового регулирования, общество, личность.

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Considering the concept of security retrospectively, the Law of the Russian Federation (adopted on 05.03.1992) № 2446-I “On security” under this concept fixed “the state of protection of the most important vital interests of a person, the state and society from internal and external threats”.

The analysis of the modern legal framework regulating the security of convicts allows us to formulate a definition of personal security of those sentenced to imprisonment, which should be understood as the state of protection of life, health and other significant interests of the convict from the possibility of harm to him and prevention of threats that arise during serving a sentence of imprisonment guaranteed by International normative legal acts and legislation of the Russian Federation.

In accordance with the Federal law (adopted on 28.12.2010) № 390 “On security”, the personal security of convicts sentenced to imprisonment involves the protection of the vital interests of these persons, which in turn fully meets the requirements contained in.

The Constitution of the Russian Federation is the basis of general regulatory legal relations, covering the entire legislative space and defining a single legal field, in turn, the regulation of public relations in a specific area is determined by industry legislation.

The Constitution of the Russian Federation guarantees the protection of human and civil rights and freedoms. Thus, the personal security of citizens is included in the list of duties of the state, as one of the fundamental ones. But, the fact is that personal security is a right for the individual and an obligation for the state.

In this regard, ensuring the safety of convicts serving sentences in places of deprivation of liberty is one of the basic duties of prison officers.

In view of the fact that human and civil rights and freedoms are the highest value in modern democratic States, the security of the individual is fundamental, as well as one of the conditions for the security of society.

By concluding international treaties and ratifying a number of international legal acts, the Russian Federation implements its direct obligations to ensure the safety of individuals and citizens, including convicted persons serving sentences in places of deprivation of liberty.

International normative legal acts regulating this activity are:

- Universal Declaration of human rights, adopted by the UN General Assembly on 10.12.1948 (Article 3 – “Everyone has the right to life, liberty and security of person”).

- Convention for the protection of human rights and fundamental freedoms adopted on 04.11.1950 in Rome (Article 2 – “Right to life”; Article 3 – “Prohibition of torture” and others).

- Standard minimum Rules for the treatment of prisoners (Chapter “Treatment of prisoners” (Articles 65–66); Chapter “Classification and individualization” (Articles 67–69) and others).

- The Code of conduct for law enforcement officials, adopted by UN General Assembly Resolution 34/169 on 17.12.1979 (Article 1 – “Law enforcement officials shall at all times perform their statutory duties by serving the community and protecting all persons from unlawful acts in accordance with the high degree of responsibility required by their profession”); Article 2 – “in the performance of their duties, law enforcement officials shall respect and protect human dignity and maintain and protect the human rights of all persons” and others).

- The set of principles for the protection of all persons under any form of detention or imprisonment, adopted on 09.12.1988. Resolution 43/173 of the 43<sup>rd</sup> session of the UN General Assembly and the European prison rules (principle 1 – “All persons subjected to any form of detention or imprisonment shall be treated with humanity and with respect for the inherent dignity of the human person”; principle 6 – “No imprisoned person shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment” and others).

– The United Nations standard minimum rules for the treatment of prisoners (the Nelson Mandela Rules) (Rule 1 – “All prisoners must be treated with respect because of their inherent dignity and their value as a human person. No prisoner should be subjected to torture or other cruel, inhuman or degrading treatment or punishment, all prisoners should be protected from them, and no circumstances can justify them. The safety and security of prisoners, staff, service providers and visitors must be maintained at all times”) (Novikov, A. A. 2014, pp. 44–45).

At the domestic level, the following system of normative legal acts regulating the security of convicted persons serving sentences in places of deprivation of liberty is in force:

1) Constitution of the Russian Federation (Articles 2, 20–23, 45, 46);

2) Normative legal acts in the field of labor legislation of the Russian Federation);

3) Criminal Code of the Russian Federation (Articles 7, 105, 107–119, 128–134, etc.);

4) Penal Code (Articles 10; 60, 82; 115, 116; Chapter 15; 86)

5) Law of the Russian Federation “on institutions and bodies that execute punishment” (Paragraph 4 of Article 13);

6) and others.

At present, issues of ensuring the personal safety of prisoners in places of deprivation of liberty are becoming increasingly relevant, since crime in institutions of the penal system is one of the most dangerous criminal phenomena.

Today, in places of isolation, there is a risk of committing illegal acts on the part of the convicts themselves, as well as on the part of other persons who visit correctional institutions for various reasons. The probability of committing crimes by convicted persons is complicated by a negative criminal atmosphere, which is accompanied by their unwillingness to comply with the requirements of the regime established by law, an obstacle to normal functioning of the institution (disorganization), etc. All of the above points to the expediency of taking timely and effective measures to ensure the personal

safety of any person who was on the territory of the correctional institution (Tsaplin, I. S. 2018, p. 92).

Based on the above, we can say that the security of convicts in the correctional institution is a multidimensional activity and contains many factors.

V. B. Shabanov, A. L. Santashov and A. L. Luk'yanovich believe that from the point of view of the security of convicts, the determining factors are those that characterize the internal processes of the social environment, which includes not only convicts, but also the relations that develop between them and in general in the penal sphere. In their opinion, this is due to the following circumstances:

– first, the community of convicts is heterogeneous in its main characteristics due to the large concentration of persons with different personal qualities;

– second, formal social relations between convicts are formed and regulated artificially, which allows them to change quickly;

– third, in our opinion, the existing informal norms in the community of convicts are divided into two groups (Shabanov, V. B., Santashov, A. L. & Luk'yanovich, A. L. 2017, p. 56).

We share the above-mentioned position of the authors, since the parameters that characterize the internal relationships of convicts are one of the main factors that determine the activities to ensure the safety of convicts.

However, there is another significant factor that determines this activity, namely, the organizational factor of the correctional institution administration, since much depends on the clear and complete performance of all employees' direct duties. All this determines the speed and quality of decisions made by the management of the correctional institution, both in regular and in emergency situations.

This position is confirmed by such authors as V. O. Milinova, Ya. V. Samiulina. In their opinion, “one of the means of ensuring security in a correctional facility is the preventive work

of operational units, security departments and other divisions. Prevention of offenses is aimed at identifying and eliminating the circumstances that contribute to their commission, as well as identifying the persons who are expected to commit offenses, and providing them with a corrective effect. Preventive measures may be tacit and carried out in accordance with the Federal law “on operational and investigative activities”, or they may be public and carried out by divisions of institutions and bodies that execute penalties, on the basis of 165 current legislative and departmental legal acts” (Milinova, V. O. & Samiulina, Ya. V. 2019, pp.163–166).

It should also be noted that security in institutions is carried out not only by the employees themselves, but also in mandatory interaction with law enforcement and other state bodies.

Thus, the execution by the state in the person of institutions and bodies of the Federal penitentiary service of Russia of its direct duties to ensure the safety of convicts include: constant and strengthened supervision of these persons, strict observance by convicts of the established order in correctional institutions, application of measures of encouragement and punishment to them, carrying out educational measures, if necessary, transfer of the convict to a safe place, etc.

All these measures are aimed exclusively at ensuring human and civil rights and freedoms in places of detention, which in turn is an additional factor that has a positive impact on the development of the state and society.

## References

Novikov, A. A. 2014, ‘International standards for the treatment of prisoners in the light of the improvement of Russian penitentiary legislation’, *Bulletin of the Vladimir Law Institute*, iss. 1(30), pp. 43–49.

Tsaplin, I. S. 2018, ‘Legal and organizational issues of ensuring personal security of convicted

persons in the execution of punishments’, *Law and right*, iss. 12. pp. 90–96.

Shabanov, V. B., Santashov, A. L. & Luk’yanovich, A. L. 2017, ‘Factors that determine the security of convicts in places of deprivation of liberty’, *Bulletin of the Siberian Law Institute of the MIA of Russia*, iss. 2(27), pp. 55–60.

Milinoва, V. O. & Samiulina, Ya. V. 2019, ‘Ensuring the safety of persons sentenced to imprisonment: problems and solutions’, in *Problems and prospects of development of the Russian Penal system at the present stage: materials of the All-Russian scientific conference of adjuncts, PhD students, cadets and students with international participation*, pp. 163–166, Samara Law Institute of the FPS of Russia, Samara.

## Библиографический список

Новиков А. А. Международные стандарты в сфере обращения с заключенными в свете совершенствования российского пенитенциарного законодательства // Вестник Владимирского юридического института. 2014. № 1(30). С. 43–49.

Цаплин И. С. Правовые и организационные вопросы обеспечения личной безопасности осужденных при исполнении наказаний // Закон и право. 2018. № 12. С. 90–96.

Шабанов В. Б., Санташов А. Л., Лукьянович А. Л. Факторы, обуславливающие обеспечение безопасности осужденных в местах лишения свободы // Вестник Сибирского юридического института МВД России. № 2(27). 2017. С. 55–60.

Милинова В. О., Самиулина Я. В. Обеспечение безопасности осужденных к лишению свободы: проблемы и пути решения // Проблемы и перспективы развития уголовно-исполнительной системы России на современном этапе : материалы Всерос. науч. конф. адъюнктов, аспирантов, курсантов и студентов с междунар. участием. Самара : Самарский юридический институт ФЦИН России, 2019. С. 163–166.



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**Shamshilova E. A.****Шамшилова Е. А.**

## REGULATION AND ORGANIZATION OF CONVICTS' WORK IN PLACES OF DEPRIVATION OF LIBERTY: SOME CHALLENGES

## РЕГЛАМЕНТАЦИЯ И ОРГАНИЗАЦИЯ ТРУДА ОСУЖДЕННЫХ В МЕСТАХ ЛИШЕНИЯ СВОБОДЫ: НЕКОТОРЫЕ ПРОБЛЕМЫ

**Abstract.** The article is devoted to the process of convicts attracting to work as a means of their correction. The main goals of convicts' employment are outlined, as well as the problems of regulatory control of this process. The data of the Prosecutor's office on compliance with the law in correctional institutions in the sphere of attracting convicts to work are analyzed. The study of legislation in the field of convicts' employment revealed fragmentary regulation of this process, which is explained by the consolidation of norms on attracting this category of persons to work in both the Penal and Labor Codes of the Russian Federation. Taking into account the fact that the basis for regulating issues in the sphere of execution of punishments is the Penal Code of the Russian Federation. The author concludes that it is necessary to make changes to the Penal legislation of Russia in the part concerning the organization of convicts attracting to work, as well as by adding rules on their dismissal. In addition, such problems in the sphere of employment of convicts as the lack of jobs, which entails a high level of non-working convicts, and the organization of remuneration that does not correspond to the stated in the labor legislation, were considered. Possible ways to solve these problems are suggested.

**Keywords:** convicts, labor of convicts, deprivation of liberty, means of correction, the Penal Code of the Russian Federation, the Labor code of the Russian Federation.

**Аннотация.** В статье рассматривается процесс привлечения осужденных к труду как средство их исправления. Обозначены основные цели трудоустройства осужденных, а также определены проблемы нормативного регулирования данного процесса. Проанализированы данные прокуратуры за соблюдением законов в исправительных учреждениях в сфере привлечения осужденных к труду. Проведенное исследование законодательства в сфере трудоустройства осужденных выявило фрагментарную регламентацию данного процесса, что объясняется за-

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креплением норм о привлечении указанной категории лиц к труду и в Уголовно-исполнительном, и в Трудовом кодексах Российской Федерации. Учитывая тот факт, что основой регулирования вопросов в сфере исполнения наказаний является Уголовно-исполнительный кодекс Российской Федерации, автором сделан вывод о необходимости внесения изменений в уголовно-исполнительное законодательство России в части, касающейся организации привлечения осужденных к труду, а также путем добавления норм об их увольнении. Кроме того, рассмотрены такие проблемы в сфере трудоустройства осужденных, как нехватка рабочих мест, которая влечет за собой высокий уровень неработающих осужденных, и организация оплаты труда, не соответствующая заявленной в трудовом законодательстве. Предложены возможные пути решения данных проблем.

**Ключевые слова:** осужденные, труд осужденных, лишение свободы, средства исправления, Уголовно-исполнительный кодекс Российской Федерации, Трудовой кодекс Российской Федерации.

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Шамшилова, Е. А. Регламентация и организация труда осужденных в местах лишения свободы: некоторые проблемы / Е. А. Шамшилова // Международный пенитенциарный журнал. – 2020. – Т. 2(1–3), № 2. – С. 112–116. – DOI : 10.33463/2712-7737.2020.02(1-3).2.112-116.

The most important place among the means of convicts' correction – one of the goals of the Penal legislation in Russia – is socially useful work. The most important place among the means of correction of convicts – one of the goals of the penal legislation in Russia – is socially useful work. Traditionally, it is considered as one of the main means for achieving this goal, indicated in Part 1 of Article 1 of the Penal Code of the Russian Federation (hereinafter – the PC of the Russian Federation). In other words, criminal punishment involves the rehabilitation of offenders by bringing them to work. However, the question of the purpose of attracting convicts to work was a subject of controversy in the legal literature.

Thus, the work of convicts pursues, from the point of view of L. G. Krakhmal'nik, economic, educational and health-improving goals (1963, pp. 12, 16). We consider it possible to agree with the opinion of this author precisely in terms of achieving economic and educational goals. In our opinion, health-improving goals can be achieved to a greater extent by physical education of convicts during sport events. At the same time, there is a healthy need for people to work to maintain normal life activity. Work, while preventing the harmful effects of idleness, compensates to some extent for the hardships of isolation, thereby preserving mental and physical health of prisoners (Shamsunov, S. Kh. 2003, p. 11).

Some authors believe that educational work, general education and vocational training with convicts in institutions that execute sentences, significantly weaken (Dubrovitskiy, L. P. 1997, p. 27–28). In this regard, we can talk about strengthening the role of convicts' labor to achieve the goal of their correction. The legislator stressed that the productive activities of convicted persons must not interfere with the main task of correctional institutions to change (correct) convicts (Part 5, Article 103 of the PC). However, it is also necessary to conduct moral and psychological work together with the involvement in labor, since the fact of acquiring labor skills does not form positive

moral attitudes of the individual and does not guarantee further law-abiding behavior of the convicted person. When referring to education by work, we mainly refer to the specifics of communication between the convict in the process of properly organized work with other convicts, which should have an impact on the formation of positive personality qualities (discipline, responsibility, self-control, etc.).

The main normative legal act regulating labor relations of convicts is the PC of the Russian Federation. However, at present, it can be said that the regulation of convicts' work is fragmentary. Thus, the procedure for employment of persons sentenced to imprisonment, conditions and remuneration of labor, its organizational and legal forms are set in Chapter 14 of the PC of the Russian Federation. This Chapter regulates issues related to convicts' employment, especially in comparison with employment of ordinary citizens, although some articles of this Chapter of the PC indicate direct references to other legal acts. For example, Part 2 of Article 103 of the PC of the Russian Federation states that convicted men over 60 years old and convicted women over 55 years old, as well as convicts who are disabled of the first or second group, are attracted to work at their request in accordance with the legislation of the Russian Federation on labor. Part 4 of the same article says that the list of jobs where the use of convicts' labor is prohibited is established by the internal regulations of correctional institutions approved by the Order of the Ministry of Justice of the Russian Federation No. 295 (adopted on 16.12.2016).

The main legal forms of organization of convicts' labor are indicated in Part 1 of Article 103 of the PC of the Russian Federation. These include centers for labor adaptation of convicts and production (labor) workshops of correctional institutions. Federal state unitary enterprises of the Penal system and organizations of other organizational and legal forms located on the territories of correctional institutions and (or) outside of them, provided

that the convicts are properly protected and isolated. In addition to these, Article 17 of the Law of the Russian Federation “on institutions and bodies that execute penalties in the form of deprivation of liberty” adopted on 21.07.1993, No. 5473-I this form of organization of convicts work is defined as economic maintenance of institutions that execute punishments and pre-trial detention centers, while the procedure for leaving convicts to prison to perform this type of work is stipulated in article 77 of the PC of the Russian Federation.

Questions of financial responsibility of convicts, working hours, rules of labor protection, safety, industrial sanitation, remuneration are assigned to the jurisdiction of the Labor Code of the Russian Federation (hereinafter – the LC of the Russian Federation). At the same time, the basis for regulating convicts' employment remains the Penal legislation, and the provisions of the LC of the Russian Federation are “auxiliary” in nature.

It should be noted that the issues of convicts' dismissal, who perform paid work, as well as the grounds for exemption from them, are absent both in the penal and labor legislation. This inevitably entails a certain number of violations, in particular, violation of the principle of convicts' mandatory labor, stipulated in Part 1 of Article 103 of the PC of the Russian Federation. From the analysis of the reports of the Prosecutor's office staff, it follows that in 79 subjects of the Russian Federation, the requirement of convicts' mandatory involvement in labor is not fully met (Archive of the Ryazan Prosecutor's office for compliance with laws in correctional institutions for 2015 – 1 quarter of 2017). This may indicate some miscalculations in the activities of correctional officials due to insufficient legal regulation of this issue. In scientific publications of contemporary authors, the problem of prisoners release from paid work is one of the most debatable (Levitskaya, A. G. 2008, pp. 51–58) and, in our opinion, require correction of law by adding rules relating to the dismissal of convicts and release them from paid work, in Chapter 14 of the PC.

Meanwhile, according to Professor V. A. Utkin, the real acuteness of the problems of attracting convicts to work at present lies not in the mandatory or voluntary nature of convicts' work. The vast majority of convicts want to engage in paid productive work (Utkin, V. A. 2015, pp. 81–88).

And this is where the problem of lack of jobs in correctional institutions manifests itself. According to the General Prosecutor's office of the Russian Federation, the average number of convicts in penal institutions in 2018, subjected to mandatory employment, was 458,876 people. At the same time, there were only 194,653 jobs available, and 170,257 people were employed, or 37.1% (Archive of the Ryazan Prosecutor's office for compliance with laws in correctional institutions for 2015 – 1 quarter of 2017) of the total number of able-bodied convicts. The mass lack of convicts' involvement to work while serving their sentences, mainly in correctional institutions where convicts are together, inevitably leads to a deterioration of law and order in these institutions and is a destabilizing factor (Shamsunov, S. Kh. 2003).

It is impossible not to touch upon the issues of remuneration for convicts, which are regulated by Article 105 of the PC of the Russian Federation. In accordance with this article, persons sentenced to deprivation of liberty have the right to be paid for work in accordance with the labor legislation of the Russian Federation. The amount of wage for convicts, who completed a fully defined monthly working time limit and fulfilled the established norm for them, may not be lower than the established minimum wage. However, contrary to this provision, including Part 3 of Article 133 of the LC of the Russian Federation on the establishment of the minimum wage, the average salary of convicts in the first quarter of 2017 was 4519.1 rubles (Archive of the Ryazan Prosecutor's office for compliance with laws in correctional institutions for 2015 – 1 quarter of 2017), while from 01.07.2016, in accordance with Federal law No. 164

adopted on 02.06.2016 “on amending article 1 of the Federal law “on the minimum wage”, the minimum wage was 7500 rubles per month. It is also worth noting that the convict’s accrued wages differs from the amount of cash credited to his personal account, because of work deductions for compensation costs in accordance with Part 4 of Article 99 of the PC of the Russian Federation and the payment of sums to claimants in the Order established by the Federal law adopted on 02.10.2007 No. 229 “On enforcement proceedings”. However, regardless of all deductions, at least 25% of the total accrued wage must be credited to the convict’s personal account (Article 107 of the PC of the Russian Federation).

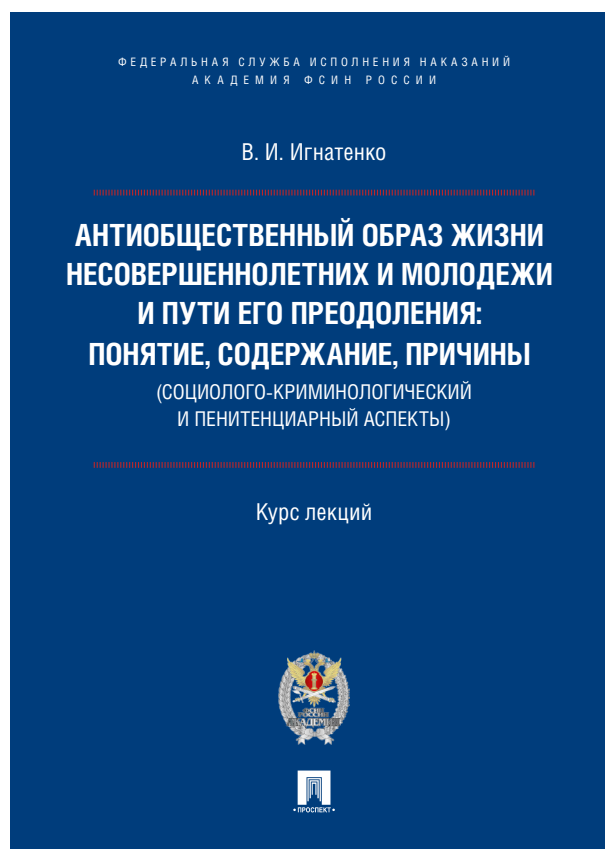
Given the existing organizational and legal problems in the field of employment in places of deprivation of liberty and the high level of non-working convicts, it can be concluded that the correction of convicts does not sufficiently depend on their involvement in work. In this regard, we agree with A. I. Zubkov’s position that it is necessary to more actively influence changes in the legislative framework and create a well-thought-out and progressive program of legislative initiatives for the future: radically revise the articles of the PC of the Russian Federation regulating the procedure for attracting convicts to work (*Penal System of Russia: development strategy: materials of the scientific and practical conference (May 26–27, 2005)* 2005, p. 8). This requires further adjustment of the penal legislation.

## References

- Krakhmal'nik, L. G. 1963, *Prison labor and its legal regulation in the USSR*, Saratov University, Saratov.
- Shamsunov, S. Kh. 2003, *Labor of persons sentenced to imprisonment in Russia (organizational and legal problems)*, Academy of law and management of the Ministry of Justice of Russia, Ryazan.
- Dubrovitskiy, L. P. 1997, *Socio-legal and organizational issues of labor among persons sentenced to imprisonment in the conditions of market relations development: PhD thesis (Law)*, Moscow.
- Levitskaya, A. G. 2008, ‘The right of persons sentenced to deprivation of liberty to work: reality and prospects’, *Bulletin of the Vladimir Law Institute*, iss. 1(6), pp. 51–58.
- Utkin, V. A. 2015, ‘Problems of legal regulation of convicts’ labor in correctional institutions of the Russian Federation’, *Criminal justice*, iss. 2(6), pp. 81–88.
- Penal system of Russia: development strategy: materials of the scientific and practical conference (May 26–27, 2005)* 2005, vol. 1, SRI of the FPS of Russia, Moscow.
- Библиографический список**
- Крахмальник Л. Г. Труд заключенных и его правовое регулирование в СССР. Саратов : Саратовский университет, 1963. 96 с.
- Шамсунов С. Х. Труд осужденных к лишению свободы в России (организационно-правовые проблемы) : монография. Рязань : Академия права и управления Минюста России, 2003. 304 с.
- Дубровицкий Л. П. Социально-правовые и организационные вопросы труда осужденных к лишению свободы в условиях развития рыночных отношений : дис. ... канд. юрид. наук. М., 1997. 250 с.
- Левицкая А. Г. Право осужденных к лишению свободы на труд: реальность и перспективы // Вестник Владимирского юридического института. 2008. № 1(6). С. 51–58.
- Уткин В. А. Проблемы правового регулирования труда осужденных в исправительных учреждениях Российской Федерации // Уголовная юстиция. 2015. № 2(6). С. 81–88.
- Уголовно-исполнительная система России: стратегия развития : материалы научно-практической конференции (26–27 мая 2005 г.). М. : НИИ ФСИН России, 2005. Ч. 1. 184 с.

V. I. IGNATENKO'S COURSE OF LECTURES  
 «ANTISOCIAL LIFESTYLE OF JUVENILES AND YOUTH AND WAYS  
 TO OVERCOME IT: THE CONCEPT, CONTENT, CAUSES  
 (SOCIO-CRIMINOLOGICAL AND PENITENTIARY ASPECTS)»

КУРС ЛЕКЦИЙ ИГНАТЕНКО В. И. «АНТИОБЩЕСТВЕННЫЙ  
 ОБРАЗ ЖИЗНИ НЕСОВЕРШЕННОЛЕТНИХ И МОЛОДЕЖИ  
 И ПУТИ ЕГО ПРЕОДОЛЕНИЯ: ПОНЯТИЕ, СОДЕРЖАНИЕ,  
 ПРИЧИНЫ (СОЦИОЛОГО-КРИМИНОЛОГИЧЕСКИЙ  
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**Author of a course of lectures**

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Viktor Ivanovich Ignatenko was born on July 6, 1935 in Kotelnich, Kirov region. In 1959, he graduated from the Omsk State Institute of physical culture (pedagogical faculty). In 1964, he graduated from the Sverdlovsk Law Institute. In 1973, he successfully defended his PhD thesis in criminology on the topic: "The social effectiveness of sports in the prevention of juvenile delinquency" at the same Institute. The PhD thesis reflects the long-term experience of the work with juvenile offenders in the Tyumen region and the Ural region. For more than 10 years, he worked at the Sverdlovsk Law Institute as the head of the department of physical education and a coach in classical wrestling.

Viktor Ivanovich Ignatenko was invited to serve in the Ryazan higher school of the Ministry of internal Affairs of the USSR in 1974, where he actively participated in the creation of the Department of criminology, where he currently works as a Professor. In 1993, in the dissertation Council of the Law Institute of the Ministry of Internal Affairs of Russia (Moscow), he successfully defended his D.Sc. thesis on criminology on the topic: "Fundamentals of prevention of antisocial lifestyle and recidivism among minors". He spent many years working at a special faculty with foreign students from countries such as Cuba, Nicaragua, Vietnam, Mongolia and Azerbaijan.

Research interests: prevention of juvenile delinquency, problems of free time of juvenile delinquents, prevention of antisocial lifestyle of young people, prevention of recidivism. Professor Ignatenko has published about 200 scientific papers and teaching materials.

The course of lectures "Antisocial lifestyle of juveniles and youth and ways to overcome

it: the concept, content, causes (socio-criminological and penitentiary aspects)" is the first Russian work devoted to the problem of antisocial lifestyle. For a long time, works that exposed the shortcomings of the socialist way of life were forbidden.

A number of the author's publications on this topic were also not allowed to be published at the time, and the topic of his dissertation research "Fundamentals of prevention of antisocial lifestyle and recidivism of minors (socio-criminological and penitentiary aspects)" was approved with great difficulty.

In the early 90's of the twentieth century, the country began to "thaw". Professor Ya. I. Gilinskiy emphasized that "thanks to Gorbachev's perestroika, for the first time in many years, it was possible to conduct research freely, without regard to the party and government, without censorship restrictions, publish results, and defend one's own scientific position".

The change in the state system of the country made it possible for the author of this book to defend his D.Sc. dissertation. The study allowed us to get stunning results, take a new look at some negative phenomena, identify a number of patterns that were not previously used in scientific and practical activities; thanks to it, the established misconceptions that made it difficult to find the truth and make the right decisions in the fight against crime were dispelled. Among them, you can specify some erroneous estimates of negative phenomena.

Times and values change, but the problem of antisocial lifestyle does not lose its relevance. The author continues research in the field of lifestyle of juveniles and young people (recidivism of juveniles; organization of youth leisure: sports as a means of overcoming antisocial lifestyle; sports and lifestyle in places of detention; work with teenagers at the place of residence, etc.). The result of this long-term research activity in these areas was this course of lectures – a fundamental multi-dimensional scientific work.

The book is written in a popular science genre that allows you to present educational material, freely expressing the author's thoughts. It deals with many acute problems that have not been reflected in the media and scientific literature for many years.

A number of important conclusions are made in the work:

- society in the fight against crime will not succeed as long as the antisocial lifestyle system is not connected to this process;

- we must free ourselves from the delusion that crime is the most dangerous of all antisocial phenomena. The study showed that antisocial lifestyle is more dangerous than crime. However, the lack of a concept of this antisocial phenomenon, ignorance of the degree of its danger did not allow creating a mechanism to counteract this previously unknown category, and crime overwhelmed society;

- crime is a consequence of antisocial lifestyle, therefore the fight against crime is a struggle with the investigation, and the need to eradicate the causes of crime – antisocial lifestyle.

The criminal legal system fights against persons who have violated the criminal law. Other acts, which include leading an antisocial lifestyle, remain out of its sight. In

addition, cadets and students of educational institutions and faculties of law do not receive knowledge about antisocial lifestyle, its causes and features, and practical bodies are far from this knowledge. In this regard, the author considers it appropriate to return the course "Antisocial lifestyle and ways to overcome it" to the educational process.

Combining the forces of the criminal legal system with the system of social control, which includes the sphere of overcoming antisocial lifestyle, should give positive results, so that the crime rate should go down.

Despite the fact that this work has no analogues in domestic and foreign science, this does not mean that it is beyond criticism and everything is indisputable in it. Some of the directions and problems indicated in it require further development, which will be taken into account in the following works of the author.

### **Gratitudes**

The Editorial Board of the International penitentiary journal is grateful to D.Sc. (Law), Professor Viktor Ivanovich Ignatenko, as well as to the publishing house "Prospekt" for their active participation in the preparation of this review.



Научное издание

## МЕЖДУНАРОДНЫЙ ПЕНИТЕНЦИАРНЫЙ ЖУРНАЛ

Научный журнал

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