CURRENT STATUS AND PROBLEMS OF LEGAL REGULATION AND PRACTICES OF ASSIGNMENT AND EXECUTION OF CRIMINAL PUNISHMENT IN FORM OF RESTRICTION OF FREEDOM

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Abstract

The purpose of this analysis is to investigate the issues of current status of application of punishment in the form of deprivation of freedom. The authors conducted a retrospective analysis of the system formation and development for the punishments appointment and execution in the form of deprivation of freedom, and also applies a comparative legal analysis for the study of a similar system in the foreign countries. The experience reflected in the international legislation, regulating the system of punishments in the form of deprivation of freedom, in the author’s opinion, will be very useful during the reform of criminal and executive legislation of the Russian Federation and the region under study. The content, types, principles, and objectives of the system are analyzed. Based on a deep analysis of sources, the authors provide the author’s definition of the system of punishment appointment and execution in the form of deprivation of freedom. The study of the regulatory framework and the practice of enforcing the system of punishments in the form of deprivation of freedom was conducted, the tendency in the overall crime rate of the North Caucasus region, as well as the current status and the main issues of legal regulation, inaccuracies and gaps in the legislation deal with the execution and appointment of punishments in the form of deprivation of freedom are analyzed. The authors analyzed the general and main objectives of forecasting. During the analysis, the authors give a definition of criminological forecasting; the types, principles and legal nature of forecasting are analyzed; and also, the specificity of the object, the subject and methods of criminological forecasting is considered. The analysis of the main methods used in the criminological forecasting was conducted. With a projection on the subject of study, the author selects the more suitable methods for the most accurate and effective forecasting of the system of punishment appointment and execution in the form of deprivation of freedom.

Keywords: punishment, deprivation of freedom, issues of legal regulation, forecast objectives, criminological forecasting.

Introduction

In Russia today, the criminal situation is rather unfavorable. In the past few years, as the analysis of the Ministry of Internal Affairs shows, there is a tendency to a significant reduction in the overall crime rate in the country, but it should be noted that mostly there is a change in its qualitative component, the nature of crimes committed has a greater public danger, and tactics of the perpetrators’ behavior becomes different.

In 2014, the number of persons convicted by the courts of first instance is amounted to 825,387, including 208,264 persons sentenced to a term of deprivation of freedom. As of 1st May 2015, more than 780 thousand
persons were held in the institutions of the penal system, of which 58.4 thousand are women and 3.4 thousand – the minors, and as of 1st July 2016 – more than 650 thousand persons [1].

In December 2009, the amendments were made to the Criminal Code of the Russian Federation (CC RF) regarding this type of punishment as deprivation of freedom.[2] Hitherto, this punishment, according to Art. 53 of the CC RF, was based on holding the convicted person, who has reached the age of majority at the time of issuance of the sentence by the court, in a special correctional institution that oversees the convicted person without isolating him from society. [3, p.119]

In the practice of punishment appointing and enforcing, shortcomings in the legislative system regulating the procedures for punishments appointment and execution are identified quite often, namely: uniformity of the types of punishments practiced in the country today, impossibility of their mutual replacement and complementarity, as well as the types of punishment equivalent to the deprivation of freedom in terms of the punitive effect. There are some cases of judicial errors in criminal sentencing, which, in turn, hampers its performance. Thus, the imperfection of the legislative framework in the field of legal activities is one of the main problems of punishment appointing and enforcing in the form of restriction on freedom. [4, p.82]

Punishment in the form of deprivation of freedom refers to the mixed types of punishment, which indicates its insignificant degree of severity. Thus, by the nature of deprivations and restrictions of the rights and freedoms of convicts, it cannot exceed such punishments as mandatory and correctional labor. According to Art. 80 of the CC RF, in the order of encouragement it is possible to replace the restriction on such punishments. [5, p.63] However, in accordance with Part 1 of Art. 60 of the CC RF, the more severe punishment envisaged for the committed crime is appointed only if the milder form of punishment is not capable to achieve the fundamental purposes of punishment.

In view of the need to adequately determine the purposes of imposing punishments in the form of deprivation of freedom and their proper execution, it is very important to estimate the necessary resources that would allow obtaining the most reliable idea in the future on what potential difficulties can be encountered in the process of punishment appointing and enforcing in the form of deprivation of freedom, and what management decisions can be made in this regard.

In order to improve the penal system, when solving problems on their execution, it is important to use methods of criminological forecasting.

Criminological forecasting is one of the main varieties of scientific foresight both in the fight against organized crime and in the subject of our study. Prevention of the possible adverse events, analysis of the possible consequences, recommendations for changing and correcting the situation, which is subject to prediction – all this is extremely urgent for solving the problems of punishment appointing and enforcing with regard to the deprivation of freedom in the Russian Federation. [6, p.18]

The ongoing in the country reform of the penitentiary system needs a more effective mechanism for the work of institutions responsible for the punishment appointment and execution in the form of deprivation of freedom. The foreign experience stated in the international legislation, regulating the system of punishments in the form of deprivation of freedom, can be very useful for criminological forecasting and studying the issues of this system. [7, p.155]

In this situation, it becomes especially urgent to develop the scientifically grounded recommendations for forecasting the system of punishments appointing and enforcing in the form of deprivation of freedom.

Thus, the study of causes, nature and scope of the problem of punishment appointing and enforcing in the form of deprivation of freedom through the criminological forecasting is relevant in modern science. All of the foregoing served as the basis for choosing the topic and determining the relevance of this study, which, in our opinion, has a great theoretical and practical significance.

The object of study is the social relations, arising in connection with the punishment appointment and execution in the form of deprivation of freedom.
The subject of study is the norms of criminal, criminal executive, criminal procedural and administrative legislation concerning the appointment and execution of punishment in the form of deprivation of freedom, and the foundations of criminological forecasting for this type of punishment.

The objective of this study is to develop the theoretical framework of criminological forecasting of the penal system to predict the resources needed for the effective punishment in the form of deprivation of freedom, allowing to achieve its goals, and execution.

MATERIALS AND METHODS

Deprivation of freedom as a form of criminal punishment began to be applied in the second half of the XIX century. Through the ages, the deprivation of freedom as a form of punishment has reflected many features of the conditional sentence in deprivation of liberty with compulsory labor service of convicts and further conditional release from the places of deprivation of liberty with the same compulsory labor service.[8, p.35]

According to the author, a conditional release should not be considered as a form of deprivation of freedom, as the meaning of Decree of the Presidium of the USSR Supreme Soviet dated 20 March 1964 consisted of conditional release, in addition, release exactly from the prison. The conditional release, according to Decree of the Presidium of the USSR Supreme Soviet dated 20 March 1964, differs in the nature of punishment, but it is more lenient in comparison with the deprivation of freedom. An important circumstance allowing to relate the conviction with mandatory involvement in labor activities and punishment is the possibility of conditional early release, introduced by Decree of the Presidium of the USSR Supreme Soviet dated 12 June 1970, taking into account the conditions of the criminal laws on the final conditional early release of the convicted person from further serving a sentence.[9,p.123]

The studied criminal law measures were finally canceled in the correctional labor legislation by the law of the Russian Federation of 18 February 1993 under No. 451-1 "On Amending the Criminal Code of the RSFSR, the Code of Criminal Procedure of the RSFSR, the Correctional Labor Code of the RSFSR and the Law of the RSFSR "On the Militia"."[10, p.47]

Since 10 January 2010, in accordance with the Federal Law No. 377-FZ of 27.12.2009, which came into force, including the amendments and additions made to Art. 53 of the CC RF and Chapter 8 of the RF Correctional Code, in particular to Art. 47 - 60, the cases of imposing punishment on convicts in the form of deprivation of freedom began in judicial practice. Deprivation of freedom is a relatively recent type of criminal punishment. However, it should be noted that the Criminal Code of the RSFSR of 1960 took into account the possibility of applying such types of punishments related to the deprivation of freedom, as the conditional sentencing to imprisonment with mandatory involvement in labor activities [11, p.122] and the conditional release with mandatory involvement in labor activities.

After a retrospective analysis, the authors made the conclusion that the constant improvement of the norms of criminal legislation aimed at combating the crime provides for stricter punishment for the grave and especially grave crimes, and the application of less stringent measures to those who have committed crimes for the first time and do not pose a great danger to society.[12, p.177] This is a distinctive feature of the criminal policy of the Russian Federation.

Analyzing the foreign experience of punishment in the form of deprivation of freedom, the author suggests paying attention to the probation, which means the work of conditionally convicted persons on whom certain duties are imposed in the execution of punishment. The positive experience of foreign countries shows that thanks to the activities of probation service, the state's expenses for the maintenance of Penal System are reduced, and moreover, there is a significant decrease in the number of crimes repetition.

In the author's opinion, it is necessary to make a number of new legal norms into the Criminal Code and the Penal Enforcement Code of the Russian Federation to legislatively regulate the appointment and execution of punishment in the form of deprivation of freedom, if the probation is to be appointed as an independent measure of criminal law.[13, p.208] It seems important to legislatively regulate, by amending the Criminal Procedure Code, the activities of probation officers both in pre-trial proceedings, that is, at the stage of preparation of the pre-trial report, and at the trial stage, that is, the presentation of such report in the court.
session and, in addition, at the stage of punishment execution. At the same time, the functioning of probation service aggravates the problems of combating corruption at all levels of its activities.[14, p.24]

The deprivation of freedom, being a criminal punishment, only hypothetically provides for the restriction of the personal freedom of the convicted person, in fact the convicted person hardly feels a difference with respect to his legal status before the conviction and while serving the appointed punishment. However, taking into account the rather wide practice of assigning this type of punishment, we believe, it is necessary to legislatively supplement the legal restrictions that make up the concept of his penitentiary treatment.[15, p. 103]In the author's opinion, it is necessary to supplement it with a number of duties, such as: be employment, further training, undergo the mandatory treatment for alcohol or drug addictions, venereal disease, etc.

The authors propose the following definition of punishment in the form of deprivation of freedom: “Punishment appointment and execution in the form of deprivation of freedom is the prohibitions and duties established by the court that the convicted person must observe and execute under the supervision of the criminal executive inspection throughout the term set by the court”.

Summarizing and studying the cases from the judicial practice of appointing the punishment as an additional one, it can be concluded that the courts most often appoint it at the insignificant real terms of deprivation of freedom with the subsequent preventive purpose of monitoring the behavior of persons after serving the main punishment, and extremely rare you can see the situation, where this punishment is appointed for the long-term imprisonment of convicted person as the main punishment.

Studying the main issues of legislative and legal regulation and practice of the appointed punishment execution in the form of deprivation of freedom, the author concludes that it is necessary to make some amendments to Art. 53 of the CC RF with a view to improving it.

1) It is submitted that in Part 1 of Art. 53, the CC RF the wording "Deprivation of freedom means the establishment of the following restrictions by the court" shall be replaced by an expanded wording: "Deprivation of freedom means the establishment of such restrictions, obligations and prohibitions against the convicted person by a court, the necessity of execution of which shall be strictly observed throughout the court's term. Moreover, against the convicted person it is obliged to establish..." and hereafter without changes.

2) It is submitted to supplement the revision of Part 2 of Art. 53, the CC RF with the following wording: "In case of a conditional sentence of person, the deprivation of freedom cannot be an additional form of punishment."

The studies practice of punishment appointment and execution indicates that to identify the gaps in the legislation system deal with the procedures for the punishments execution and appointment, in particular, the uniformity of the types of punishments practiced in the country today, the impossibility of their mutual replacement and complementarity, and also the types of punishment equivalent to the deprivation of freedom in terms of the strength of punitive effects. In order to improve the penal system, while solving the problems for their execution, it is important to use methods of criminological forecasting.

Punishment in the form of deprivation of freedom refers to the mixed types of punishment, which indicates its insignificant degree of severity.[16, p.131]Thus, by the nature of deprivations and restrictions on the rights and freedoms of convicted persons, it cannot exceed such punishments as the compulsory and correctional labor According to Art. 80 of the CC RF, it is possible to replace the restriction with such punishments in the order of encouragement. However, in accordance with Part 1 of Art. 60, the CC RF, the more severe punishment envisaged for the committed crime is appointed only if the milder form of punishment is not capable to achieve the fundamental purposes of punishment.

Criminological forecasting is one of the main varieties of scientific foresight both in the fight against organized crime and in the subject of our study.[17, p.55]
The public relations arising of crimes commission, as well as the criminally executive and criminological conditions and opportunities that help to ensure the prevention of various kinds of crimes act as the object of criminological forecasting [18, p.65].

The subject of criminological forecasting means a system of preventive measures for the prevention of crimes, a technique for effective influence on criminals, as well as the materials of existing official checks and directly personal cases of persons previously brought to justice.[19, p.97]

Criminological forecasting can be scientific and practical, depending on the direction of activities, and is differentiated by the objects of forecasting.

Forecasting on the object can be applied in the part of technique, tactics, organization and methods of investigation and prevention of the crimes of small and medium severity. [20, p.40]

Forecasting in the field of investigation methodology contributes to the definition of main prospective ways and directions of the investigation and prevention of crimes of small and medium severity. [21, p.67]

The need for criminological forecasting by the proposed effect is determined by the development of practical effectiveness forecasts for providing the increased security in those or other places susceptible to criminal activities, possible physical or material damage suffered by the victim of intentional or reckless crime committed in the category of small or medium severity.[22, p.2441]

First of all, the criminological forecast is obliged to be based on reliable data; secondly, it shall be biased and subjective; thirdly, it shall be carried out on the basis of proper application of specific methods and techniques of forecasting.

The authors note that the collection and analysis of criminological information about the states, patterns and trends, as well as forecasts of the development of certain criminological situations in a particular territory is applied using the special methodological techniques, methods and means of criminological research.

When conducting the criminological research, which purpose is to study, evaluate and predict the crime rate, as well as the processes, phenomena and events that affect it, usually you shall use a large volume of experience in the criminological knowledge obtained during the existence of criminological thought, in the Criminology Science as a whole.[23, p.39] As a consequence, we believe that the existing methodology, a set of special techniques and methods of criminological knowledge form the basis of a system of criminological security to prevent the socially dangerous actions.

The practical use of criminological forecasts is not limited to the planning of crime prevention measures.[24, p.108] Thus, a prediction of this type takes place when the punishment is imposed by a court, and especially when restraining freedom or releasing from serving a sentence with trial. The study provided a reasonable list of factors that must be established in criminal proceedings, and the results shall form the basis for the decision on release.

The authors come to the opinion that the timely organization and qualitative conduction of criminological forecasting (for different categories of convicted persons and types of crimes) will, in turn, significantly contribute to the improvement of the system of criminal responsibility measures and the order of their execution in the part of solving problems of crime rate reduction, and increasing the effectiveness of crime prediction and prevention.

The most acceptable way in predicting the commission of crimes of small and medium severity and effectiveness of punishment appointing for them in the form of deprivation of freedom is to build the scenario models for a particular region, including the study of criminological portrait of the territory in a particular region[25, p.11], analysis of the criminological and psychological characteristics of convicted persons to form their law-abiding behavior, and to optimize the purposes of punishment in the context of crime prevention task, as well as the effectiveness of activities of the Corrective Services for the punishment execution in the form of deprivation of freedom.
RESULTS

The following author's definition of the punishment appointment and execution in the form of deprivation of freedom is given: “Punishment appointment and execution in the form of deprivation of freedom is the prohibitions and duties established by the court that the convicted person must observe and execute under the supervision of the criminal executive inspection throughout the term set by the court”.

The necessity of making some changes in Art. 53 of the CC RF with a view to improving it is justified:

a) It is submitted that in Part 1 of Art. 53, the CC RF the wording "Deprivation of freedom means the establishment of the following restrictions by the court" shall be replaced by an expanded wording: "Deprivation of freedom means the establishment of such restrictions, obligations and prohibitions against the convicted person by a court, the necessity of execution of which shall be strictly observed throughout the court's term. Moreover, against the convicted person it is obliged to establish..." and hereafter without changes.

b) It is submitted to supplement the revision of Part 2 of Art. 53, the CC RF with the following wording: "In case of a conditional sentence of person, the deprivation of freedom cannot be an additional form of punishment".

It seems very important to use the foreign experience in relation to the probation service, which effective best practices can contribute to reducing costs for the maintenance of penitentiary system and to significantly reduce the number of offenses repetition. At the same time, functioning of the probation service aggravates the problems of combating corruption at all levels of its activities. The more powers a probation officer will have, the higher the risk of such offenses. It is also necessary to formalize the legal status of probation officers (to determine the type of civil service, zone of responsibility, rights and duties of officers, their social security, etc.).

The necessity of improving the activities of law execution bodies and amending the penal execution legislation, taking into account the national, ethnic and religious factors of the North Caucasus region is justified.[26, p.282]

In order to develop an algorithm for the punishment appointment and execution in the form of deprivation of freedom, involving the use of modern achievements in Criminology, Criminal Executive Science and Criminal Law, along with the development of law execution and lawmaking practices, it is recommended to base on the results of analysis of the following factors, which shall be taken into account in the course of forecasting:

- detailed criminological characteristics of the region;
- criminological and psychological portrait of persons convicted to the punishment in the form of deprivation of freedom;
- revision of the purposes of convicts' punishment in the context of crime prevention;
- conditions required to ensure the law-abiding behavior of persons convicted to the punishment in the form of deprivation of freedom; and
- work effectiveness of the probation services in the execution of the punishment in the form of deprivation of freedom.

Using the model of criminological forecasting, shortcomings in the regulation of legislation on the punishment appointment and execution in the form of deprivation of freedom are identified, the problems of improper performance of their duties by law execution authorities are determined, the influence of a complex crime situation, taking into account the specifics of the region under study, on the institution of punishments execution is reasoned, as well as the necessity of applying a successful foreign experience is justified, which should contribute to the greater regulation of mechanism for the punishment appointment and execution in the form of deprivation of freedom.[27, p.145]
The introduction of a fully automated program on crimes registration and recording (forecast chart), registering the local/regional criminological problems, deprived areas in the city/region and their characteristics, as well as on determining the effectiveness of law execution authorities is proposed.

At the legislative level, it seems justified to consolidate the provision on applying even more restrictions to the punishment in the form of deprivation of freedom against the convicted persons, by using a differentiated approach to both the already corrected convicts and the violators, and applying the means of social mobility. A wider application of the deprivation of freedom will increase the number of people held in the correctional system facilities, reduce the negative influence of the criminal environment on the convicts, and help them to grow and socialize in the society.

DISCUSSIONS


In spite of the efficiency and significance of the researches conducted by the above authors, most of the works are dedicated either to the individual forecasting of a particular crime or the analysis of general criminological situation in the Russian Federation. However, the comprehensive study of the system of punishment appointment and execution in the form of deprivation of freedom within the criminological research has not been conducted yet.

CONCLUSION
The authors note that when studying the issues of criminal punishment appointing and executing in the form of deprivation of freedom, it is important to take into account the ethnic, national and religious specifics of the North Caucasus region, in particular, the Chechen Republic. The factors specific to the growth of crime in the Chechen Republic are the circumstances of ethnic, confessional, economic, corruption, tribal, victimological, personal and other nature, which hinder the identification, registration and accounting, as well as the disclosure of crimes committed.

According to the authors, shortcomings of the Criminal Law on punishments in the form of deprivation of freedom may be classified as follows:

1) the concept of criminal punishment in the form of deprivation of freedom does not always correspond to its role in the common mechanism of criminal penalties;

2) the punitive potential of punishment in the form of restraint of freedom is very low, and therefore it can be argued that the list of legal restrictions to achieve the purposes of criminal punishment is clearly insufficient.
Our analysis of 160 criminal cases in the courts of the Chechen Republic and 90 personal files of the convicts in the penitentiary inspectorates of the State Institution of Federal Penitentiary Service of the Russian Federation for the Chechen Republic has showed, that there had been some judicial errors in appointing the punishment in the form of restrictions on freedom. The most significant of them are as follows:

1. There are no restrictions established to be an obligatory component of the punishment appointment and execution.

2. Restrictions shall be assigned for each offense separately.

3. Errors may be related to the fact that the territory on which the punishment is executed is specified.

4. Errors related to the nature of the defendant's work.

5. Errors refer to the fact that the offender is charged with the duties not provided for by the laws, although the list of duties and restrictions given in Art. 53 of the CC RF is exhaustive. Consequently, the establishment of additional restrictions by the court, which are not provided for by the regulatory prescriptions, is contrary to the law.

Summarizing the practice of erroneous application of punishment in the form of deprivation of freedom in various regions of the Chechen Republic, the authors come to the conclusion that the courts tend to prescribe the mandatory types of restrictions in a stereotyped way, and not always take into account the specifics of this punishment relating to its execution.

The subsequent exclusion of certain restrictions will provide an opportunity to implement a differentiated approach to the convicted person, taking into account the degree of his correction. This can be an option for implementing the means of social mobility, which, according to the recommended practices of the FSIN of Russia (Federal Penal Execution Service), should be understood as "mechanism for changing the conditions of serving punishment, changing the type of correctional facility, replacing the unserved part of the sentence with a milder form of punishment, parole by assessing the behavior of convicted persons by a Commission of the correctional institution using the certain criteria."

The authors suggest to consolidate at the legislative level the provision on applying even more restrictions to the punishment in the form of deprivation of freedom against the convicted persons, by using a differentiated approach to both the already corrected convicts and the violators, and applying the means of social mobility. A wider application of the deprivation of freedom will increase the number of people held in the correctional system facilities, reduce the negative influence of the criminal environment on the convicts, and help them to grow and socialize in the society.

The practice of punishment appointment and execution, which was analyzed by the authors, allows us to identify the gaps in the legislation system deal with the procedures for the punishments execution and appointment, in particular, the author highlights the uniformity of the types of punishments practiced in the country today, the impossibility of their mutual replacement and complementarity, and also the types of punishment equivalent to the deprivation of freedom in terms of the strength of the punitive effects.

It seems that the Chechen Republic has a number of peculiarities in the application of punishment in the form of deprivation of freedom. So, in 2013 there was a slight increase in the number of people convicted of restricting freedom as the main form of punishment, while the increase in the number of people convicted of restricting freedom as an additional form of punishment was very rapid, had an uneven dynamic. Among other things, this situation, probably, can be explained by the fact that in 2012 the Chechen Republic began the implementation of electronic monitoring of controlled entities. Thus, the republic has become almost the most successful region, which uses the electronic ankle tracking device (EATD).

Despite the problems that have arisen, in the process of operating the electronic surveillance and control equipment, the author notes that the use of EATD device by the staff of Corrective Services contributes to the
effective oversight and control over the observance of restrictions and obligations established by the supervised entities. Opinion poll of the chiefs of the Federal State Institution, Corrective Services of the Department of Federal Penitentiary Service of Russia (FSI CS DFPS) for the Chechen Republic made it possible to more accurately assess not only the statistical, but also the real picture of the category under study.

The need for a scientific study of the issue of criminological forecasting is determined by the society's emerging needs for anticipating the possible antisocial phenomena and events, in particular errors and violations of the courts when imposing a penalty in the form of restraint of freedom, as well as investigating a possible relapse by using the EATD in order to determine the possibilities of preventing the said phenomena.

The illegal behavior of personnel of the Corrective Services is a social phenomenon, in respect of which the most accurate and reliable quantitative forecast is very difficult. Certainly, criminological forecasting will not eradicate all the manifestations of criminogenic tendencies, but will contribute to their minimization, since the predicted future will be presented as a number of potentially negative situations.

The complete detailed forecasting by using a variety of methods was not included in the main objectives of this study, but our approximate calculations based on the certain predictive methods allow us to make the assumption that in the coming years in Russia the number of people sentenced to deprivation of freedom will increase approximately by 1.5-2 times and is expected to be more than 120,000 persons per year.

As the main prospects for the appointment and execution of criminal punishment in the form of deprivation of freedom, the author proposes some specific actions that contribute to the formation of an integrated, unified concept for improving the system of punishments appointing and executing in the form of deprivation of freedom in order to ensure the compliance of the measures of criminal responsibility with the level of social and economic development of the state, criminological structure and dynamics of crime rate, including the recidivism, social adaptation of convicts, in the part which contains information about the development of promising areas of organizational and administrative activities of the officers of law enforcement authorities, and bodies responsible for the punishment appointing and executing in the form of deprivation of freedom.

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