

ECONOMIC AND OFFICIAL CRIMINALS IN THE PLACES OF DEPRIVATION OF LIBERTY: NEW APPROACHES

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ABSTRACT

This article is devoted to the scientific project developed in Russia on serving criminal sentences in the form of deprivation of liberty of convicted persons for the commission of economic crimes in the sphere of entrepreneurship and (or) official crimes. The article analyses the results of the sociological study on the problem of differentiation of serving deprivation of liberty by convicted persons for the specified types of crimes, which were carried out by the Scientific Educational Center "Problems of criminal-executive law" named after Yu. M. Tkachevsky of M.V. Lomonosov Moscow State University. The existing positions in Russia on the punishment of economic and official criminals are considered, the assessment of their effectiveness was given. It was drawn the conclusion that the most realistic approach to solving the problem should be recognized the detention of convicted persons for economic and official crimes separately from other categories of convicted persons, namely in separate correctional colonies.

Keywords: Convicted Person, Deprivation of Liberty, Economic and Official Crimes, Correctional Colonies, Official Criminals, Punishment.

INTRODUCTION & LITERATURE REVIEW

Economic criminality in the sphere of entrepreneurship (business) and the closely related official corruption criminality pose the serious danger to states regardless of their geographical location, political regime and level of socio-economic development.

Firstly, it is about the huge amounts of economic damage from these types of crimes, especially when the facts of embezzlement of state budget funds are revealed. It is not about millions, but billions of dollars of systematic embezzlement, usually committed by officials who were obliged to spend the funds of the state entrusted to them economically and rationally. Such criminal embezzlements are periodically reported in the media of various countries.

Secondly, such crimes have a great negative political effect. The commission of official corruption crimes discredits the state power, and economic crime in the field of entrepreneurship strengthens the positions of extremist forces opposed to market reforms in states with the transitional model of economy.

Thirdly, the commission of these crimes provokes social tension in society. It is no secret that in a number of states with the transitional economic model (Eastern Europe, Central Asia, the Middle East, etc.) there is a significant social stratification due to the large difference in incomes and living standards of different social groups. Criminal methods of obtaining material goods, often associated with the embezzlement of state budgetary funds and loans, falsification of goods, the withdrawal of funds to offshore companies, receipt of multi-million and billion-dollar bribes, exacerbate contradictions between rich and poor, serve as fertile ground for the emergence of social conflicts and various kinds of revolutions.

Fourthly, economic and closely related with it official corruption criminality negatively affects the international authority of the state, impedes the creation of the favorable investment climate in the economy and prevents the establishment of inter-state and inter-corporate economic ties.

Fifthly, the example of its existence, economic and official corruption criminality, especially economic and official elites, provokes the growth of economic and corruption criminality at the grass-roots, the level of everyday life.

It is known that it is better to prevent the crime than to punish for it. However, if preventive measures did not deter the commission of the crime, it is arisen the question about punishing the offender. At the same time, there should be assessed not only the punishment itself as a measure to combat crime, but also the social consequences of punishment. The world-famous Norwegian criminologist Nils Christie pointed out that it is necessary to fear not so much criminality as the consequences of the fight against it (Christie, 2001). What, in its essence, should be the criminal sentencing of deprivation of liberty for economic and official criminals? Should they (economic and official criminals) serve a criminal sentence of deprivation of liberty with or separate from all convicted persons? The answers to these questions are currently relevant not only for Russia, but also for the countries formed in the post-Soviet space, in particular for the Republic of Kazakhstan (Akimzhanov, 2019).

RESEARCH METHODOLOGY

In order to study the problem of separation of economic and official criminals from other categories of convicted persons, it was realized the scientific project to prepare the theoretical Model for serving deprivation of liberty by convicted persons for economic and official crimes. The project was implemented in 2017-2018 by the Scientific Educational Center "*Problems of criminal-executive law*" named after Yu. M. Tkachevsky of the Law faculty of M.V. Lomonosov Moscow State University.

The methodology of preparing the doctrinal model on serving the deprivation of liberty of convicted persons for the commission of economic and official crimes included the study:

1. Domestic historical experience of serving the deprivation of liberty of convicted persons for the commission of economic and official crimes;

2. Modern domestic experience of serving the deprivation of liberty of convicted persons for the commission of economic and official crimes;
3. Foreign experience of serving the deprivation of liberty of convicted persons for the commission of economic and official crimes;
4. International-legal instruments and standards of the treatment of convicted persons to deprivation of liberty, the legal positions of the European Court of Human Rights and the European Committee against Torture (ECAT);
5. The Constitution of the Russian Federation, the legal positions of the Constitutional Court of the Russian Federation, the Supreme Court of the Russian Federation and the practice of courts of general jurisdiction, as well as the norms of federal legislation regulating the imposition and execution of criminal sentencing in the form of deprivation of liberty;
6. Public opinion through the questionnaire of 501 respondents via the “*Internet*” system;
7. Professional opinion by means of questionnaire 234 officials of correctional colonies, in which convicted persons to deprivation of liberty for economic and official criminals serve their sentence;
8. Expert opinion by means of questionnaire of 50 qualified experts (well-known scientists, teachers and scientific employees of educational organizations of higher vocational education of the Russian Federation);
9. The opinions of 213 convicted persons for the economic and/or official crimes serving the sentence in the form of deprivation of liberty in correctional colonies of Russia.

This methodology made it possible to obtain the reliable and objective results of scientific research, which are based on foreign and domestic experience of the execution of criminal sentencing in the form of deprivation of liberty, as well as on the results of the studying the public, professional and expert opinion about possibility of differentiation of the procedure of serving the criminal sentencing in the form of deprivation of liberty by convicted persons for the commission of economic and official crimes. In addition, the methodology of the research made it possible to assess the views of public and professional opinion on solving the problem of preventing economic and official criminality in Russia through criminal sentencing in the form of deprivation of liberty. The content of this scientific article will be devoted exactly to this aspect.

RESULTS & DISCUSSION

In Russian legal science, there are three positions (points of view) on the question of prevention of economic and official criminality through criminal sentencing in the form of deprivation of liberty.

The first position is the position of intimidation. It consists in sending large economic criminals and official criminals, especially bribetakers, acting as part of organized criminal groups and communities, to separate places of deprivation of liberty (correctional colonies) located in remote “*bear*” places of the country (Smirnov, 2017). It is about the regions of Siberia, the Far North and the Far East in the Russian Federation. The essence of this position is clear: the harder the conditions of deprivation of liberty will be for these categories of criminals, the greater the volume of repression they will experience, the less there will be a desire to re-engage in criminal economic and official criminal activities. During the assessment of this proposal, there should be taken into account that, firstly, whether these categories are so dangerous in modern conditions that they should be sent to these remote places. Perhaps, terrorism is more dangerous in its spread and consequences of the crime; should convicted

persons for these crimes serve their sentences in correctional colonies located in remote places? In this aspect, the opinion of citizens, surveyed in the framework of this research, is interesting. It turned out that specified types of crimes and measures to counter them are in the sphere of attention of the majority of respondents. Thus, the surveyed citizens are worried about problem of criminal activity in the following ratio: on the economic (entrepreneurial) activity 90.0%, and in the sphere of official crimes - 95.6%. One of the questions of the survey of citizens concerned the level of danger of various types of crimes (Table 1). The answers were distributed as follows to the question: “*which of these criminal activities are most dangerous to our country in modern conditions*” (it was possible to underline several answers).

Name	Number of Answers	Percent	Place
Terrorism	244	47.8%	2
Narcotic criminality	189	37.7%	5
Economic (in the sphere of entrepreneurship) crimes	193	38.5%	4
Official crimes	256	51.9%	1
Pedophilia	150	29.9%	7
Murders and other crimes against the person	206	41.1%	3
Both are equally dangerous	170	33.9%	6

Source: Estimated.

Thus, according to the respondents, official crimes pose the greatest danger to our country in modern conditions. This opinion is quite explainable by the facts of corruption in public authorities that are periodically uncovered by law enforcement agencies receiving widespread media coverage. In second place, citizens put terrorism, which takes place not only in our country, but also in other countries of Europe and the world. In third place-violent crimes and in fourth-economic crimes.

Secondly, there should be assessed the material costs of the state to realize the position of intimidation. Although some of the correctional colonies, in which the criminal sentencing in the form of deprivation of liberty is carried out, are located in remote areas of Russia, however, some of the correctional colonies in these areas should be opened or modernized. Considerable material means will require for the construction (modernization) in remote “*bear*” places of the country of correctional colonies and the detention of these categories of convicted persons. This issue is very important for Russia, which has the transitional model of economy and which is experiencing economic difficulties at the present stage of development. It should be borne in mind at calculating material costs that it is necessary to build correctional colonies that meet the requirements of international standards for the treatment of convicted persons, and more precisely, meet the standards of the Council of Europe, as the Russian Federation is a member of this regional international organization.

Thirdly, how will be assessed in international human rights bodies, especially by the European Court of Human Rights (ECHR) such segregation of the convicted persons for economic and official crimes? The ECHR found the violation of Article 8 of the European Convention for the Protection of Human Rights and Fundamental Freedoms (right to respect for

family and private life) in connection with serving the deprivation of liberty in geographical areas, remote from the family's place of residence, in case No. 35090/09 of March 7, 2017, "*Polyakov and others against Russian Federation*" (The solution of ECHR (the European Court of Human Rights) on the case of Polyakov and others against the Russian Federation). *The similar decision of the ECHR took place on July 3, 2018 in the case "Soldiers against Russian Federation"* (The solution of ECHR (the European Court of Human Rights) on the case of Soldiers against the Russian Federation). Accordingly, the Russian Federation was obliged to pay financial compensation to convicted persons and members of their families. Similar compensations may follow in favor of convicted persons and family members of economic and official criminals.

The second position is the position of reception. It is protected, in relation to economic crime, by representatives of the business circles of Russia and in part by human rights defenders. According to the experience of a number of foreign countries (USA, Great Britain, France, Israel, etc.) they suggest to open private prisons for the detention of businessmen; (Whether private prisons in Russia are needed: the special conditions of imprisonment are suggested for businessmen. This idea is supported by individual scientists of Russia (Belik, 2017). As part of the research, the analytical review of the legislation and practice of the execution of criminal sentences in the form of deprivation of liberty in foreign countries was prepared, which reflected the functioning of private prisons. However, there are no found convincing arguments in the summarizing of foreign practice in favor of opening private prisons in Russia. In our opinion, the idea of opening private prisons needs further discussion and it is attractive only externally. In fact, it cannot be implemented in Russia in modern conditions due to the lack of economic incentives for business in this sphere and high risk of corruption phenomena in the execution of punishment in private prisons.

The third position is the position of conservatism. It is expressed in the traditional approach for today, which is to send such persons to ordinary correctional colonies throughout Russia in accordance with the current legislation. The correctional colony in modern Russia represents the complex of buildings (dormitories) under protection, there are accommodated up to 100 convicted persons in one living space depending on the square. There are also small-sized living quarters for two, four or six convicted persons. There is no camera detention in the colonies, convicted persons move within the correctional colony from rise to retreat, as the rule independently. As of December 1, 2019, there were functioned 700 correctional colonies in Russia, in which 427,805 convicted persons were serving their sentences, including 33,474 convicted persons served sentence in 121 colonies-settlements (open-type correctional colonies). 7 correctional colonies were opened for convicted persons sentenced to life imprisonment and for persons to whom the death penalty was commuted to imprisonment in the form of a pardon, where 2,010 convicted persons are serving their sentences. Convicted men and women, minors and adults, recidivists and for the first time convicted to deprivation of liberty are serving sentences in different correctional colonies in Russia. The penitentiary legislation, existing in Russia, provides that convicted persons for the first time for different types of crimes serve sentence in one colony: for official, economic, violent and mercenary-violent crimes, crimes in the sphere of drug trafficking, terrorist crimes, etc. Therefore, the proponents of this position hope that serving the deprivation of liberty by economic and official criminals, together with the

usual criminal element, characterized by criminal orientations, and, often, aggressive behavior, will prevent the re-return of convicted persons to criminal economic and official business.

Otherwise, the criminal environment of places of deprivation of liberty is used to assist the state in the prevention of economic (in the field of entrepreneurship) and official crimes. In fact, convicted persons for economic and official crimes in places of deprivation of liberty are influenced by criminally oriented, socially neglected, often aggressive categories of persons, convicted of other crimes (against the person, public security, etc.). According to Smirnov (2019), as the result of the joint detention, the large number of convicted persons constantly surrounds the convicted person, so he is in tension. The criminal environment of places of deprivation of liberty, with its informal rules of conduct, significantly increases repression for those convicted persons for economic and official crimes. Concerning some convicted persons, the criminal environment of places of detention induces them to refuse recurrence (recidivism) of crimes. For others, the same criminal environment serves as a means of involving economic and official criminals in criminal organized groups. But there is no doubt that there is an increase in the repressive beginning in punishment through the influence of the criminal environment of places of deprivation of liberty. This is also confirmed by the results of the survey conducted by the staff of the correctional colonies. The first block of questionnaire questions was aimed at clarifying the attitude of staff of correctional colonies to the practice of joint detention of convicted persons for economic crimes (in the sphere of entrepreneurship) together with other categories of convicted persons, to the identification of positive and negative aspects of such detention. The results of the questionnaire indicate the positive perception by the staff of correctional colonies of the existing practice of joint detention of convicted persons for economic crimes with other convicted persons. About half of respondents support this practice: 47.5% of respondents rated it positively. Every fifth (20.0%) found it difficult to answer. However, every third (32.5%) expressed the negative attitude towards the practice of joint detention of convicted persons for economic crimes and other categories of convicted persons. Answering the question about the positive aspects of the practice of detention of convicted persons for economic crimes together with convicted persons for other crimes, every third (33.0%) of respondents believes that this increases the punitive content of punishment for economic criminals. This was the prevailing positive aspect of the practice of joint detention of convicted persons at the assessment by correctional colony staff. According to the question, which was stated to the staff, about attitude to the existing practice of detention in correctional colonies of convicted persons for official crimes together with convicted persons for other general-criminal offences, almost half of the respondents (45.0%) approved the existing practice of joint detention, more than a quarter (26.0%) - treated it negatively, about the same amount (27.5%) did not decide on this issue, and some of them (1.5%) treated this idea indifferently or neutral. Answering the question, what positive aspects has the practice of joint detention of convicted persons for official crimes and convicted persons for other crimes, about one third (31.0%) of surveyed respondents believe that joint detention increases the punitive content of punishment for convicted persons for official crimes.

Thus, the idea of increasing criminal repression regarding convicted persons for official and economic crimes through their joint detention with other categories of criminal offenders has clear support from the staff of correctional colonies. However, whether this position is moral, whether it is in conformity with the principles of criminal and penal enforcement legislation. As

Antonyan (2017) rightly notes, if the court sentences only to deprivation of liberty, why the convicted person is forced to live... in the conditions of congestion, mistrust and hostility. In addition, as this scientist notes, if the power of informal anti-social and especially criminal groups is strong in the colony, if so-called "*thieves in the law*" freely cruel, practically, the object of violence and robbery can become practically any convicted person. As we can see, the suggested solutions in the field of treatment of economic and official criminals are rather debatable. One is undoubted.

This is the fact that today's conditions are characterized by the contradictory development of the market economy and the immanently inherent corruption of the state apparatus, and here the task of further differentiation of convicted persons to deprivation of liberty is urgent, including by allocating to the separate group of convicted persons for economic and official crimes. However, how can this differentiation be achieved? There should be noted that such differentiation is based on taking into account all economic, political, social and spiritual factors. It is advisable to develop the doctrinal model for serving deprivation of liberty for economic (in the field of entrepreneurship) and official crimes in separate correctional colonies as the first step in solving the problem of differential and effective enforcement of custodial sentences. This expediency is explained by a number of arguments.

Firstly, these categories of convicted persons are differed in their socio-demographic, criminal-legal and penal enforcement characteristics. The results of the Special census of convicted persons, serving deprivation of liberty and detained persons (in November 2009, in Russia), showed that more socially useful links are remained with the family and other social-positive environment among convicted persons for economic and official crimes. The convicted persons for these crimes have a higher educational qualification in the sphere of general and vocational education. They are characterized by having experience of professional activity in the field of economy and management. In addition, these convicted persons are distinguished by stable positive behavior while serving their deprivation of liberty and the desire for stable professional work activity (Kalinin, 2012). Most of them have intellectual potential, which was previously allowed them, on the one hand, to acquire certain economic capital and/or to occupy certain heights in the state structure of society. On the other hand, this potential did not allow them to assess the risks of criminal economic and official behavior, which can be partly explained in the context of dynamically changing political, social and economic conditions in the country and in the world (Matskevich, 2017).

Secondly, new approaches to serving the deprivation of liberty of convicted persons for economic crimes are dictated by the interests of countering criminality in general, since the splicing of economic, official and general-criminal criminality in places of deprivation of liberty leads to the further reproduction of criminality at the new integrative and most dangerous level. At present, the interests of criminal circles and their desire to bring the activities of correctional institutions under their control are clearly evident in places of deprivation of liberty. Often, the activities of various leaders of the criminal world impede the economic development of productive activities in places of deprivation of liberty; leave convicted persons who wish to work without work and their families without means of subsistence. In addition, the criminal authorities see in convicted persons, serving the deprivation of liberty for economic and official crimes, as a kind of "*money bag*" for comfortable existence in places of deprivation of liberty and continuation of criminal activity. This is confirmed by the results of the survey of the staff of

correctional colonies. Every fifth (21.5%), in relation to economic criminals, and every tenth (10.0%), in relation to official criminals, noted as negative sign of joint detention of convicted persons that it contributes to the formation of criminal groups of economic orientation. In relation to the Russian economy as a whole, this can lead to further and already irreversible criminalization of business, which is fraught with negative consequences not only in the economic, but also in the political and social spheres.

Thirdly, the creation of the doctrinal model on serving the deprivation of liberty by convicted persons for economic and official crimes is relevant, because the scheme of undifferentiated and joint serving the deprivation of liberty, fixed in law, is dangerous for violations of human rights at the serving of deprivation of liberty; as these categories, as practice shows, become vulnerable when the criminal activities of convicted persons for criminal offences is continued in places of deprivation of liberty. Every tenth of personnel pointed to the extortion by criminal authorities of money from convicted persons for economic crimes (9.5%) as negative aspects of the practice of joint detention of convicted persons for economic and other crimes. This negative phenomenon, unfortunately, is common in places of deprivation of liberty of Russia. This is evidenced by the media, official investigations and trials. This negative is confirmed by the results of another questionnaire conducted as part of the implementation of the present research, namely, the questionnaire of convicted persons serving the sentence in the form of deprivation of liberty: every tenth of convicted persons (9.4%) replied that there were facts of extortion of property from convicted persons for economic crimes. In addition, 12.0% of the surveyed staff employees noted harassment and other violations of the rights of convicted persons for economic crimes by other convicts as negative aspects of joint detention of convicted persons. Similar phenomena were noted by the staff of correctional colonies and convicted persons in relation to the persons serving the deprivation of liberty for official crimes (Seliverstov, 2019).

Imprisonment as one of the severest types of punishment if often applied. However, imprisonment has to be applied as an exceptional measure of punishment when other types of punishment do not allow the achievements of the aims (Akimzhanov et al., 2016).

Fourthly, in solving this problem, it is necessary to proceed from the economic interests of the state in general and business in particular. The commission of the economic or official crime in the conditions of economically and politically unstable society should not undermine the desire and possibilities of convicted persons to apply their higher professional level of development, their knowledge and intelligence to the development of the country's economy and the production capacity of the penitentiary system. Considering the social nature of crime, counteracting crime has to cover besides legal questions and other spheres of activity as crime is no other than a product of the society. The modern theory of criminal law should investigate the criminal and legal legislation and law-enforcement practice first of all, in order to establish, and then and to resolve the available problems in the field of criminal law, morals, rationality and justice (Akimzhanov et al., 2018).

CONCLUSION

It is necessary to recognize, as the most realistic approach to solving the problem, the detention of convicted persons for economic and official crimes separately from other categories,

namely in separate correctional colonies. Such separate detention would have positive consequences. The absence of counteraction of the criminal element will allow establishing an effective punitive-educational process, one of the elements of which will be productive and creative work of convicted persons. In addition, it will contribute to the observance of human rights, which is the most important sign of the rule of law. The detention of convicted persons for economic crimes in separate correctional colonies will guarantee the personal security of convicted persons and the security of their business, which cannot be fully achieved at the “*mixed form*” of serving the deprivation of liberty in one correctional colony of different categories of convicted persons. As the prospects for further research of the considered problem, it is necessary to point out the development of measures to minimize the potentially negative shortage of detention of convicted persons for economic and official crimes in separate correctional institutions in the form of the breakdown in social ties with the family.

It seems to us that it may be weakened by the introduction into modern penal enforcement practice of technical means of communications of convicted persons with their families (for example, the possibility for the convicted persons to have the video visits with family members). In addition, convicted persons for economic and official crimes and their families, as practice shows, have the great financial opportunities to maintain social ties even if the correctional colony is significantly removed from the place of residence of the family of convicted person. The analysis of the problem of introduction for convicted persons for economic and official crimes, as well as other crimes, procedure and conditions of serving punishment in the form of deprivation of liberty can be referred to the prospective research. The interests of scientific objectivity and completeness of the research require the consideration of three possible variants:

1. The procedure and conditions of serving the punishment will remain unchanged for these categories of convicted persons;
2. The procedure and conditions for serving the punishment will be toughened for these categories of convicted persons;
3. The procedure and conditions for serving the punishment will be extenuated for these categories of convicted persons.

In addressing this issue, it seems that we should proceed from the understanding that that the punitive content of the criminal punishment in the form of deprivation of liberty (degree of isolation from society) cannot be differentiated on the basis of social and official status. This would be contrary to international standards of the treatment with convicted persons, as well as to the principle of equality of citizens before the law, fixed in the Article 19 of the Constitution of the Russian Federation, which should be ensured on a number of grounds, including the social and official status of the citizen. As it seems, the new approaches to serving the deprivation of liberty of convicted persons for economic and official crimes should include a set of measures on: correction of the criminal and penal enforcement policy of the Russian Federation in relation to these categories of convicted persons; amending the norms of the Criminal Code of the Russian Federation; amending the norms of the Penal Enforcement Code of the Russian Federation; improving the practice of the execution of sentences and the correction of convicted persons for economic and official crimes; forming the positive attitude towards new approaches

in the treatment with economic and official criminals from the side of the public, professional and expert opinion.

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