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SISTEMATIZAÇÃO DA LISTA DE PENAS CRIMINAIS: PROBLEMAS E SOLUÇÕES

SYSTEMATIZATION OF THE LIST OF CRIMINAL PENALTIES: PROBLEMS AND SOLUTIONS

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RESUMO

Objetivo: O artigo explora os desafios e propõe soluções para a sistematização da lista de penas criminais na legislação russa, focando nas punições não privativas de liberdade. Visa estabelecer uma estrutura coerente e aborda as inconsistências nas restrições legais**.**

Métodos: O estudo utiliza uma combinação de análise lógica formal e pesquisas sociológicas, envolvendo práticas nacionais e internacionais para enquadrar suas recomendações. A metodologia de pesquisa integra análise legal de atos regulatórios com uma abordagem sociológica, pesquisando profissionais do direito para obter suas percepções sobre o tema.

Resultados: A pesquisa identifica uma variação significativa nas restrições legais entre as punições não privativas de liberdade, o que complica sua classificação e comparação. Propõe a reestruturação do sistema de penas criminais em subsistemas distintos para alinhar as punições mais de perto com sua natureza e severidade e sugere a implementação de sistemas paralelos para civis e pessoal militar.

Conclusões: O estudo conclui que para reduzir discrepâncias e aprimorar a coerência das penas criminais, uma abordagem sistemática é necessária. Isso envolve a delimitação mais clara das punições principais e adicionais e a adoção de um sistema estratificado que reflete a severidade e a natureza de cada pena.

Palavras-chave: Pena criminal. Sistematização. Punições não privativas de liberdade, Gestão legal. Direito russo.

ABSTRACT

Objective: The article explores the challenges and proposes solutions for systematizing the list of criminal penalties within Russian legislation, focusing on non-custodial punishments. It aims to establish a coherent structure and addresses the inconsistencies in legal restrictions.

Methods: The study employs a combination of formal logical analysis and sociological surveys, engaging with both domestic and international practices to frame its recommendations. The research methodology integrates legal analysis of regulatory

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acts with a sociological approach, surveying legal professionals to gauge their insights on the topic.

Results: The research identifies a significant variance in legal restrictions among non-custodial punishments, which complicates their classification and comparison. It proposes restructuring the system of criminal penalties into distinct subsystems to align punishments more closely with their nature and severity and suggests the implementation of parallel systems for civilians and military personnel.

Conclusions: The study concludes that to reduce discrepancies and enhance the coherence of criminal penalties, a systematic approach is necessary. This involves the clearer delineation of principal and additional punishments and adopting a stratified system that reflects the severity and nature of each penalty.

Keywords: Criminal punishment. System of punishments. Systematization. Legal restrictions. Ladder of punishments.

1 INTRODUCTION

Systematization as a process is an important aspect of any complex phenomenon. The process of systematization of criminal penalties, which is the organization of objects, that is, punishments into a system, is no exception.

There are many approaches to systematization, but the most common is differentiation, which was applied by the legislator when building the current system of punishments: despite the continuous ordinal presentation of punishments, the current system assumes their grouping by criteria, the main of which is the division of punishment groups depending on the application of measures providing isolation from society.

Turning to the analysis of the order of placement in the ladder of criminal penalties, we note the presence of a significant difference between criminal penalties in terms of legal restrictions, which provide for isolation from society and do not imply such. In this regard, we consider it possible and necessary to consider them separately.

An analysis of the group of punishments that do not provide for isolation from society shows that they are quite versatile. This is due to the fact that alternative punishments to imprisonment involve different sets of legal restrictions, their scope, limits, as well as consequences (Shugurov & Pechatnova, 2023).

In the legal literature, a significant number of points of view are expressed regarding the order of these punishments in a single ladder. Some believe that

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restriction of freedom is the most severe punishment among this group, which is established in the current ladder of punishments; others call deprivation of the right to hold certain positions or engage in certain activities (Pushkarev et al., 2019); others call a fine as such, which occupies the first line in the list, i.e., it is presented to the legislator as the mildest punishment (Polovchenko, 2023). In general, the points of view are justified by the above approaches to determining the severity of criminal punishment. The arguments given as justification are quite logical, and the conclusions certainly have a right to exist.

Such a broad representation of the versions of the sequence of punishment is quite interesting from the point of view of the development of science; however, in our opinion, it is increasingly easier to build this subsystem of criminal penalties logically in principle. The reason for this is, it would seem, what, undoubtedly, should be attributed to the advantages of the subsystem in question – its versatility. The use of a wide range of legal restrictions makes it possible to diversify the subsystem of these punishments and to present them widely in the current legislation, which is one of the main vectors of the development of modern domestic and international policy in the field of administration of justice (Russkevich, 2023). At the same time, the flip side of the coin is the use of legal restrictions that differ in their essence, nature, and content as a basis.

The data obtained allow us to conclude that the largest number of punishments involve restrictions in the labor sphere, including deprivation of the right to hold certain positions or engage in certain activities, compulsory work, and correctional labor, as well as restrictions on military service (Vasyukov, 2021). At the same time, even within this legal restriction, its essence differs depending on the specific punishment, which makes it difficult to correlate even these punishments according to the criterion of severity.

For example, part of the first punishment provides for a prohibition of action, while part of the other three punishments actually prescribe action. Other punishments involve other restrictions and deprivations mentioned above: a fine, financial and property restrictions, deprivation of a special, military, or honorary title, class rank and state awards, moral and psychological punishment in the form of restriction of freedom - restriction of freedom as a legal restriction.

It seems rather difficult to correlate these legal restrictions with each other. We believe it is impossible to establish greater leniency or strictness, for example,

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restriction of freedom in comparison with restrictions in the labor sphere. This issue has an individual approach to each specific case of punishment for committing a crime, taking into account the personal characteristics of the perpetrator.

The limits of the use of punishments also add some uncertainty to the issue. Thus, punishments that, in accordance with the current construction of the ladder, are milder, have an indefinite effect or provide for long periods exceeding the duration of more severe punishments, which we have already drawn attention to above. Accordingly, the consequences in the form of financial and property losses will also exceed the second specified group. The data obtained on the perception by convicts of the punishments of the group in question also indicate the great importance of financial and property restrictions and deprivations for one group of convicts and have insignificant consequences for persons who do not experience difficulties in this area.

As a consequence of the above, we state that this group of criminal penalties does not have a single legal restriction used by the legislator as a basic one, and the limits of their application and consequences further confuse the situation. In this regard, it is not possible to logically build these criminal law measures into a consistent chain from mild to severe due to the above problems of their correlation (Polovchenko, 2021).

2 MATERIALS AND METHODS

As the main method in the process of writing this scientific article, the authors used a general scientific systematic method of cognition, which allowed them to substantiate the theoretical and practical aspects of systematizing the list of criminal penalties in the law (Polovchenko, 2021).

A formal logical method consisting in the analysis of the essence and content of various types of punishments.

The specific sociological method used in the survey of investigators and interrogators, lawyers, prosecutors, and judges allowed us to develop ways to improve the theoretical provisions on the systematization of punishments (Polovchenko, 2023).

The methods of analysis and synthesis made it possible to identify existing problems in the systematization of the list of criminal penalties, to propose and justify solutions to them (Ermakov et al., 2022; Petrovskaya, 2023).

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3 RESULTS

The results obtained indicate that at the heart of each system, in this case, a small system – a subsystem of criminal penalties without isolation from society, a single basis should be laid, which in this case may be legal restriction. The adjustment of such a legal restriction itself to a greater or lesser extent in terms of the volume of its implementation, as well as the addition of auxiliary deprivations and restrictions, will make it possible to correlate criminal penalties with each other and correctly build the appropriate ladder. This legal restriction should be fixed as the main one in all punishments of this group as the main one.

Given the impossibility of excluding punishments from the list of Article 44 of the Criminal Code of the Russian Federation, the way out is seen in the construction of parallel subsystems of the general system of criminal penalties interacting with each other. To resolve the issue of such a construction, it is necessary to refer to the existing experience of legislators of foreign countries.

So, for example, the criminal legislation of the French Republic (The Criminal Code of France, 2002) provides for 3 groups of punishments: criminal, applied for committing crimes; correctional for committing offenses; and additional, prescribed as an addition to the main punishment (Polovchenko, 2021). The French legislator has provided for criminal penalties exclusively in the form of prolonged isolation. Correctional punishments, however, primarily provide for non-custodial punishments.

In general, a related approach has been applied in the Criminal Code of Belgium (The Criminal Code of Belgium, 2004). Criminal offenses are divided into 3 types: crimes, misdemeanors, and police violations for which the appropriate groups of punishments are applied, but in ascending order: punishment for committing a crime implies the possibility of applying all these types of measures of influence; measures that can only be applied for committing crimes are not subject to application for committing an offense; and for a police violation – the least choice of measures of influence, i.e., measures provided exclusively for the commission of a crime or misconduct are not applied (Shugurov & Pechatnova, 2023).

The Spanish legislator differentiated criminal penalties into severe, less severe, and small ones and provided for them in different parts of the same article (Beisov et al., 2013; The Spanish Criminal Code, 1998)). The classification is based on the size

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of the map, and the types of punishments themselves are repeated in almost all three groups. The legislator also allocates additional punishments to a separate group.

The division of basic and additional punishments in different norms is provided for in the Criminal Code of China (The Criminal Code of China, 2017).

Also, in one norm, the Dutch legislator provided for all punishments, dividing them into parts of the article providing for basic and additional punishments (The Dutch Criminal Code, 2001), and in the Criminal Code of Japan, these punishments are listed within one part of the article, only a direct indication of the measure used as an additional one is provided – Article 9 (The Criminal Code of Japan, 2002).

In connection with the above, we consider it possible and necessary to rely on foreign experience in building a system of criminal penalties, taking into account the peculiarities of the domestic legal system as a whole.

The specified group of punishments contains several measures providing in their content one right restriction of deprivation and restrictions in the labor sphere. They are dominant and have the longest period of legislative consolidation of their application in practice. This fact allows us to focus on these punishments as forming the basis of the considered group of non-isolation measures.

Thus, the penalties providing for the exercise of labor activity: compulsory labor, correctional labor, and restriction on military service are currently arranged in the specified sequence. Comparing them with each other, it should be noted that one punishment – restriction on military service can be applied only to a separate category of convicts – military personnel serving under contract. In this regard, it seems doubtful that it should be fixed in the general system of punishments, which is also pointed out by A.V. Zvonov, considering this issue in detail.

The way out of this situation is seen in the already existing experience of legislative activity. Similarly to the system of punishments for minors, we consider it necessary to consolidate a separate list of punishments applied to military personnel.

Additionally, we note the domestic experience: a similar approach has been followed by the domestic legislator in the past. Thus, conditionally "complex" systematization was applied in the Code of Criminal and Correctional Punishments of 1845 (Russian legislation of the X–XX centuries, 1988) which contained 11 types of punishments divided into 36 stages of types, taking into account parallel degrees – 47. By consolidating such a complex system, the domestic legislator provided for their division into groups, in general similar to French legislation: criminal – Article 19,

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correctional – Article 34, additional – Article 61, as well as special punishments – Article 67. It should be noted that special punishments were applied for crimes related to official activity, the experience of which we also took into account and applied within the framework of the proposals made. In general, a similar classification of punishments was in effect in the subsequent editions of 1866 (The Code of Criminal and Correctional Punishments of 1885, 1915) and 1885 (The Code of Punishments for criminal and correctional offences, 1867) of the Code on Criminal and Correctional Punishments.

In turn, compulsory labor and correctional labor have a consistent arrangement that correctly reflects their relationship: the former are a milder punishment compared to the latter (Polovchenko, 2021). This aspect is not questioned in the legal literature.

At the same time, one punishment of this group, which provides for a ban rather than an order for action, is the deprivation of the right to hold certain positions or engage in certain activities. Due to the exceptional duration of its duration, it is difficult to correlate with the above types of work. Having a smaller one-time volume of legal restrictions, it can be more stringent when it is appointed for the maximum possible or close to it period. In this regard, it is difficult to determine its place in the punishment system.

Taking into account the presented data, as well as its criticism as a punishment that does not have adequate means of ensuring, we believe it is possible to raise the question of changing its status and applying it only as an additional punishment to the main one. The experience of such a design has in the domestic system of punishments – punishment in the form of deprivation of a special, military, or honorary title, class rank, and state awards.

However, the consolidation of these punishments in the general system does not contribute to solving the issue. In this regard, in this case, we consider it possible to apply foreign experience and provide for an independent consolidation of the list of punishments applied as additional ones. Additionally, we note that the compared punishment is not comparable with the considered group of punishments due to the difference in the basic legal restrictions underlying them.

For the same reason, they cannot be compared with a fine. This punishment has proved its relevance, and therefore, its exclusion from the punishment system is not possible, but the irrevocability of the consequences, as well as the difference in the basics, also makes it impossible to determine its place in the punishment system. In

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this regard, consideration is required of the possibility of removing it from the general list of punishments and fixing it in a different status.

The best option, in our opinion, is, as in the previous case, to fix it as an additional one. Firstly, the justification for this is the growth of his role in this capacity. Secondly, the point of view is undoubtedly justified that any judicial proceedings in connection with the commission of a crime by a person constitutes a significant item of State expenditure and such a person must compensate for the funds spent by the State (Bayazitova et al., 2023). Based on this, we consider it necessary to raise the issue of not just the application of a fine as an additional punishment, but its mandatory imposition on all convicted persons.

The last criminal punishment of a group without isolation from society is restriction of freedom. This punishment, according to the current system, is the most severe in the list of alternative measures to imprisonment. However, such consolidation, in our opinion, is rather doubtful. This is indicated by the fact that the restriction of freedom does not provide for the implementation of any work. It involves the implementation of enhanced control by a specialized body, in this case, the penal enforcement inspectorate of the Federal Penitentiary Service of Russia, but it should be remembered that all convicts are under supervision, the only difference is in its density, which is much higher for the category of convicts in question due to the use of technical controls.

This is also indicated directly by the opinion of the convicts themselves, who perceive the restriction of freedom as a conditional sentence, with which these measures have many similarities. In turn, punishments related to the exercise of labor activity are accepted by convicts as having a much greater punishment. Based on the above, we believe that this punishment does not take its place in the list of punishments provided for in Article 44 of the Criminal Code of the Russian Federation.

Taking into account the above approaches to resolving issues of systematization of criminal penalties, we consider it possible to consolidate it as an additional one. This, as in the case of a fine, is also indicated by judicial practice, shortcomings in supervision in the execution of other punishments not related to imprisonment: according to many scientists, they do not have the necessary means of ensuring control, which is characteristic of restriction of freedom (Russkevich, 2023). With this in mind, we consider the use of restriction of freedom as a mandatory

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additional measure to be in demand, as indicated by the demand for control over persons released from places of deprivation of liberty after serving the appointed term.

Summing up the interim results of the consideration of the issue of the order of construction of punishments not related to isolation from society, we note that it does not lend itself to logical structuring for a number of reasons. In this regard, fundamental changes are required, providing for the differentiation of punishments by groups with their intended purpose.

Turning to the second subgroup of punishments involving their execution within a specialized institution, we note that, unlike the previously considered group, they have a legal restriction uniting them. Under it, there is a restriction of freedom of movement, at the same time in its extreme manifestation, consisting in the isolation of a convict within a specialized institution.

Assessing the order of the location of punishments in Article 44 of the Criminal Code of the Russian Federation, we note that with respect to most of them, there are no questions about the unfairness of fixing them in places on the list, neither the legislator, nor the law enforcement officer and the persons against whom punishments are applied. The most severe punishment, the place of which is not disputed in the list, is the death penalty, slightly less severe is life imprisonment and imprisonment for a certain period, respectively, in sequence.

Other punishments of this subgroup are also recognized as less severe than those indicated; however, there is competition between them. So, if the arrest provides for short-term imprisonment, then detention in a disciplinary military unit and forced labor involve much longer terms. However, such an aspect as the content of punishment in terms of punishment in the form of arrest is incomparably greater compared to the other two punishments, due to conditions similar to detention in prison. In connection with the above, it is necessary to recognize the existence of competition of these punishments according to objective conditions. In turn, subjective factors indicate that arrest is a more severe punishment when imposed in comparison with other specified measures. This conclusion is made possible by the results of the survey of convicts (Bayazitova et al., 2023).

In turn, comparing forced labor and detention in a disciplinary military unit, we immediately emphasize that based on the previously presented arguments, such a specially directed punishment as detention in a disciplinary military unit should be fixed

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within the framework of an independent subsystem of punishments applied to military personnel.

In addition, since arrest actually provides for two subspecies of it with their own specifics, differentiated into those applied to civilians and military personnel, we consider it necessary to consolidate it in the appropriate punishment subsystems, depending on the subject of its serving.

4 CONCLUSIONS

The subsystem of punishments related to placement in a specialized institution is currently built quite logically, changes are required only in part of the punishments applied to a special category of convicts – military personnel.

Considering the issue of the implementation of the proposed proposals in legislation, we note that the solution to the problem is seen in the fundamental restructuring of the punishment system by compiling punishment subsystems: the subsystem of punishments applied to civilians, which should include compulsory labor, correctional labor, forced labor, arrest, imprisonment for a certain period, life imprisonment, death penalty; the subsystem of punishments applied to military personnel, which should include restriction on military service, arrest, detention in a disciplinary military unit; a subsystem of punishments applied as an additional one, which should include deprivation of a special, military or honorary title, class rank and state awards, deprivation of the right to hold certain positions or engage in certain activities; punishments applied as an additional one with mandatory application, which should include restriction of freedom upon conviction to punishments providing for isolation from society and a fine.

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