





Criminal Legal Means of Preventing Mercenary Crimes Committed by Convicts during the Period of Serving Their Sentence

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Abstract: In this article, the authors conduct a theoretical and legal assessment and analysis of the state's modern criminal policy to counter the mercenary crime of convicts by criminal law means. The purpose of this study is to consider the features of the use of these means aimed at preventing the examined crime. To achieve this goal, the authors set and consistently solved the following tasks: developed a classification of criminal-legal means of preventing mercenary crimes committed by convicts; the foreign experience of criminal-legal prevention of mercenary crimes of convicts was considered; the features of the use of these means of a criminal-legal nature in order to prevent the crime under investigation was analyzed. The methodological basis of the study was made up of such methods as dialectical, logical, statistical, comparative-legal, analysis, synthesis, etc. The study made it possible to draw conclusions and some generalizations, in particular, it was concluded that criminal policy is designed to keep the level of crime in the area under consideration and to counteract such crimes so that they are not destructive. Based on the analysis of doctrinal sources, scientific researches, as well as foreign experiences, the article formulates a theoretical substantiation of the importance, necessity and effectiveness of the use of criminal law means aimed at preventing mercenary crimes committed by convicts. The results of this study can be used in the science of Russian criminal law with the aim of further developing proposals for improving legislation and law enforcement practice.


1 INTRODUCTION


The problem of combating crime by criminal legal means continues to be in the spotlight. As always, the most economical and humane way to solve this problem is to prevent it.


Contributing to the achievement of the goals and, accordingly, the increase in the effectiveness of the criminal law itself, this task should have a direct impact on both lawmaking and law enforcement (Lacey, Soskice, Hope, 2018). But, despite this, federal laws and regulations aimed at crime prevention do not effectively solve this problem.


One of the markers indicating problems in this aspect is criminality among persons against whom measures of criminal legal action were applied. This

is evidenced by the growth trend in the proportion of crimes committed by persons who did not serve criminal punishment at the time of the crime. So, in 2020, among the convicts, 20.7% (104,942 persons) at a time of committing a crime had not served their sentence. In the general structure of crime among convicts, 50.1% are crimes of a mercenary orientation, which are formed by crimes in the field of the economy, drug trafficking and corruption. At the same time, the bulk of the mercenary crimes of convicts (81.4%) are crimes against property. The overwhelming majority of mercenary crimes were committed by persons serving sentences not related to isolation from society, which in general negatively characterizes the existing organizational and legal system for preventing crime of persons not related to

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imprisonment and criminal policy in general (Goryainov, Kaluzhina, 2015).

The presented crime rates among convicts indicate that law enforcement officials are not interested in using criminal-legal crime prevention in practice, since their main task is to detect crimes, search for criminals, investigate criminal cases, and also prosecute (Brandon, Gregory, Zimmerman & Steven, 2017). Such circumstances do not sufficiently contribute to solving the problem of crime prevention.

In connection with the ongoing liberalization and humanization of criminal policy, which has actualized the importance of non-custodial punishments and measures of a criminal-legal nature, which undoubtedly requires a study of the problems of prevention among convicts of repeated crimes, including those of a mercenary nature. One of the effective mechanisms for the prevention of mercenary crime among convicts is special measures of a criminal nature, with the help of which it is possible to regulate the legal status of the convicted person (Peeters, 2015).

The foregoing makes it necessary to revise modern legislation in the field of combating crime, as well as the criminal legislation of Russia in order to systematize the preventive measures of a criminal nature provided for by law.

In recent years, following researchers devoted their study to the issues of criminal-legal crime prevention to one degree or another: R.A. Bazarov (2018); M.V. Baranchikova (2015); Goryainov K.K. (2015); I.V. Dvoryanskov and D.I. Ivanov (2015); V.I. Zubkova (2017); M.V. Kovalev (2018); T.V. Nepomnyachshaya (2017); T.N. Nurkaeva (2015); A.V. Sinelnikov (2015); Yu.V. Truntsevsky (2015); A.S. Shuisky (2018), S.I. Kurilov (2019) and others.

2 MATERIALS AND METHODS

In the process of preparing this article, the methodological basis was formed by the universal method of scientific cognition - materialistic dialectics, within which a set of general scientific and specific scientific methods of cognition was applied.

At the initial stage of this scientific research, including considering certain areas of criminal-legal prevention of mercenary crime of convicts, universal methods of cognition were used: analysis and synthesis. At the next stage of scientific research, including considering various points of view of scientists, a logical method was used; in the process of analyzing the practice of using criminal-legal

means of prevention, various empirical methods were used.

At the final stage, including considering the possibility of applying special measures of a criminal nature within the framework of criminal law and criminological activity, the dialectical method of scientific knowledge was used. When describing the results of this scientific research, the method of generalization with elements of deduction was mainly used.

3 RESULTS AND DISCUSSION

The conducted research of Russian and foreign criminal legislation revealed the following types of forms of crime prevention: the very norms that establish criminality and punishability of acts, within the framework of which general and private prevention is implemented; criminal systematization of repeated mercenary crimes, which allows to form a unity of approach to the punishability of acts; norms that have a qualifying feature, providing for the application of the legal institution of repetition; norms with elements of general prejudice.

In the current Criminal Code of the Russian Federation, within the framework of the prevention of mercenary crime of convicts, only three of the above forms of prevention are implemented: norms establishing criminality and punishability of acts, norms with administrative prejudice and norms with the institution of repetition, and the last two means of prevention are not developed significantly.

Analyzing the system of criminal-legal means of preventing the mercenary crime of convicts, one should point out its rather complex nature. When considering the criminological indicators of this crime of convicts, we considered only those that form the overwhelming mass in the volume of mercenary crime of convicts, within four groups: crime against property, in the sphere of economic activity, in the sphere of drug trafficking and corruption crimes.

The largest share in the mercenary crime of convicts (94.7%) is formed by crimes against property, among which, in turn, the largest part (77%) is theft, whose percentage in the total structure of thefts is 24.9%. The intensity compared to the general level higher by 29.2%, which, despite the decrease in the share of thefts in the structure of the crime of convicts and their percentage, should be considered as a negative criminological characteristic of the crime of convicts. Similar patterns can be seen in relation to robberies, banditry and extortion, whose share at the group level is higher than at the general

level and amounts to 6.7%. The intensity among convicted persons is 22.3% higher than among persons who are not serving at the time of the commission of a crime. In addition, there is a negative trend towards an increase in fraud, embezzlement and misappropriation among convicted persons by 21%.

Based on the system-forming feature - the presence of the goal of extracting material or other benefits of a material nature, which, in one way or another, is associated with selfish motivation, we can propose the following systematization of the means of preventing the mercenary crime of convicts:

- the first systematization is based on the presence in the formulations of the dispositions of norms of the mention of self-interest (selfish interest and selfish motives, as well as a selfish goal).

- other means of preventing the mercenary crime of convicts, presented in the norms of the Special Part of the Criminal Code of the Russian Federation without mentioning the selfish motivation of the crime, are also subject to systematization, which may be based on the nature of the object of criminal law protection.

As we can see, there are a lot of acts committed with the aim of extracting material benefits or obtaining other property benefits. In combination with the norms, in the disposition of which there is a mention of selfish motivation, a wide range of means of combating these crimes is formed, as well as means of their criminal-legal prevention, acting both within the framework of general and private prevention. At the same time, it is obvious that both considered groups of means of criminal-legal prevention should be considered in a complex, which requires their classification.

More convenient, according to the authors, is the classification based on the nature of the object of criminal law protection, within which it is advisable to group the investigated means of criminal law prevention by the nature of the disposition of the norm. Thus, the list of means of criminal-legal prevention of mercenary crime of convicts includes 13 groups, which testifies to the broad mechanism of criminal-legal crime prevention through the norms of the Special Part of the Criminal Law.

The study of the preventive potential of the norms of the Special Part is impossible without a legal assessment of the main signs of an objective and subjective nature that form them, which will reveal the general approaches of the legislator to the design of those mechanisms, the implementation of which has a preventive value.

It should be noted that in the Criminal Code of the Russian Federation, mercenary crimes are

concentrated in different sections and chapters of the Special Part, which indicates the presence of significant differences within the framework of generic and specific objects. Actually, this objective difference lies at the heart of one of the classifications we have previously considered of the investigated means of criminal-legal prevention of mercenary crime of convicts. Moreover, there are no provisions in the criminal legislation indicating the presence of systemic unity among the norms establishing criminal liability for mercenary encroachments, despite the presence of obvious similarities in terms of subjective characteristics.

However, in a number of foreign states, there are some definitions that make it possible at the legislative level to determine the unity of the legal system of responsibility for mercenary crimes. For example, in the Criminal Code of Germany, Section 25 «Punished greed» is specially highlighted. Interest in this case is the basis for the grouping of norms, which is the characteristic of the subjective side, expressed in the presence of selfish motivation, which allowed this legislator to combine within one section such different acts as § 284 «Unauthorized organization of gambling»; § 291 «Usury»; § 292 «Poaching»; § 297 «Endangering ships, road and air transport by means of prohibited cargo» (German Laws, 1998).

Similar acts in the Criminal Code of the Federal Republic of Germany are concentrated in other sections, the names of which are formulated in accordance with the characteristics of the objective side of the crime, for example, Section 19 «Theft and appropriation», Section 20 «Robbery and extortion», etc. In addition, the Criminal Code of the Federal Republic of Germany contains three more norms, in the dispositions of which self-interest is mentioned - murder and trafficking in children, as well as a particularly serious case of a punishable act against the environment for selfish motives (part 4 § 330). In general, such a systematization reflects the specifics of German legal technology and does not pursue the goal of forming a comprehensive institution of criminal legal protection of public relations from mercenary encroachments (Boers, Walburg, Kanz, 2017).

The Belarusian legislator approached the systematization of mercenary crimes somewhat differently. In the Criminal Code of the Republic of Belarus, as well as in Germany, there is no uniform systematization of mercenary crimes. However, the systematization of theft - the most widespread mercenary crimes- has been formulated. Specifically, Note 1 to Chapter 24, Crimes Against Property,

provides a definition of embezzlement. Unlike Note 1 to art. 158 of the Criminal Code of the Russian Federation, the idea of embezzlement in the Criminal Code of the Republic of Belarus is much wider and, in addition to theft, robbery, banditry, fraud, appropriation and embezzlement, there is also a deliberate unlawful gratuitous acquisition of other people's property or the right to property for a mercenary purpose through extortion, abuse of official powers and the use of computer technology (Criminal Code of the Republic of Belarus, 1999–2019).

Note 2 to Chapter 24 of the Criminal Code of the Republic of Belarus reveals the concept of repeated theft, which further expands the understanding of the system of mercenary crime under the legislation of the RB. The category of repetition itself, according to Art. 41 of the Criminal Code of the RB presupposes the commission of similar or identical crimes in cases specifically provided for by the Special Part of the Criminal Code of the RB, regardless of whether a person is serving a sentence or not, therefore it is quite consistent with the subject of our scientific interest. The significance of this legal institution lies in the fact that special repetition is considered as a qualifying feature, which naturally leads to an increase in the limits of punishment and, accordingly, enhances the direct impact of private prevention and psychological impact within the framework of general prevention.

It should be noted that this legal institution is absent in the criminal legislation of the Russian Federation, however, there is an institution of repetition, regulated in the norms of the Special Part of the Criminal Code of the Russian Federation, mainly in the context of administrative prejudice, including in relation to certain mercenary crimes (Art.151.1 of the Criminal Code of the Russian Federation; art. 157 of the Criminal Code of the RF, art. 158.1 of the Criminal Code of the RF, art. 171.4 of the Criminal Code of the RF), which do not change the legal status of a convicted person in case of committing a similar crime and, accordingly, cannot be considered as direct means of preventing the recurrence of a crime, however, in general, the preventive value of administrative precedence is difficult to overestimate since the presence of this legal institution in any case contributes to the provision of a positive preventive effect on a person who has the inclinations of criminalization (Savelyeva, 2019), expressed in the repetition of socially harmful behavior.

A person prosecuted for a socially harmful mercenary crime, for which he has already been brought to administrative responsibility, reveals the

social danger of his repeated unlawful behavior and the criminal deprivation of his personality (Yakovleva, 2020). Accordingly, bringing him to a stricter type of punitive liability, in addition to private prevention, also implements an educational function that demonstrates to the guilty person, using the example of the discrepancy between the degree of punishment of the act and its actual nature, the undesirability of continuing unlawful behavior (Heap, Black, 2021).

Continuing the assessment of the significance of the criminal law systematization of mercenary crimes in the framework of the prevention of mercenary crimes, we note the Norwegian experience, which is characterized by a wide coverage of mercenary crimes. In particular, Section 263 of Chapter 24 «Embezzlement, Theft and Illegal Use» of the Norwegian Penal Code states that if a person accused of embezzlement or theft has previously been punished with imprisonment under both Chapter 24 and Chapters 17, 18, 25, 26, 27 punishment can be increased up to 50% (Criminal Code of Norway, 1902–2003).

It should also be noted that the institution of repetition is applied in relation to certain types of crimes in a number of foreign countries.

So, in Moldova, the institution of repetition, as a qualifying feature in the norms of the Special Part of the Criminal Code of the Republic of Moldova, is fixed mainly in crimes against the person - murder, crimes against sexual freedom and privacy, including in mercenary crimes against the person - Trafficking in human organs, tissue and cells (art. 158); Human trafficking (art. 165); as well as in mercenary crimes against family and minors (art. 206 «Trafficking in children») and mercenary crimes against health and community (Art. 217-1 «Illegal trafficking in drugs, ethnobotanical means or its analogs for the purpose of alienation») (Criminal Code of the Republic of Moldova, 2002).

In the Criminal Code of China, the institute of repetition is provided for only in one norm of the Special Part (in Art. 356 of the Criminal Code of the PRC), but by its action it covers the acts provided for in §7. «Smuggling, sale, transportation, production of drugs». The measures of influence proposed by this norm are of interest (Criminal Code of the People's Republic of China, 1997). According to its provisions, the commission of crimes from this paragraph by a person previously convicted of such crimes is punished with the most severe punishment provided for in the articles of this paragraph (Bussmann, Niemeczek, Vockrodt, 2017).

Considering the social significance of the institution of repetition, taking into account the presence in the criminal legislation of Russia of norms providing for an administrative prejudice and the institute of repetition in relation to Art. 291.2 of the Criminal Code of the Russian Federation and to crimes against sexual freedom and privacy, as well as the spread of this legal institution abroad, we believe it is possible to restore it in the Criminal Code of the Russian Federation, but in terms of the repetition of criminal behavior by a person serving a sentence and only for such crimes as embezzlement, a number of mercenary economic crimes, drug trafficking and corruption crimes.

At the same time, among the group of crimes we are investigating (within the framework of qualified compositions involving the addition of a sign of repetition), such a type of punishment as imprisonment does not directly affect the property interests of the convicts, is not always supported by additional punishment that complements the main punishment by affecting these interests and therefore, there is no reinforcing preventive effect of the investigated measure of a criminal-legal nature (Yakovleva, 2020).

For example, imprisonment does not imply the appointment of a fine as an additional type of punishment for such compositions as Part 2 of art. 159, part 2 of art. 159.1, part 2 of art. 159.2, part 2 of art. 159.3, part 2 of art. 159.5, part 2 of art. 159.6, part 2 of art. 160, part 2 of art. 166, part 2 of art. 194, part 2 of art. 198, part 2 of art. 199, part 2 of art. 201, part 2 of art. 202, part 2 of art. 234.1 of the Criminal Code of the Russian Federation. Moreover, this circumstance is surprising in relation to fraud, which traditionally refers to crimes within which criminal professionalism develops, and they, like professional crimes, are transformed depending on the development of public relations (van der Geest, Weisburd, Blokland, Arjan, 2017).

Considering that the most important sign of professional crime is the constancy of criminal activity and its assessment as the main source of income (Omigov, 2011), it seems that the effectiveness of the punishability of crimes that reveal certain signs of professionalism (in particular, repetition) requires the influence of property in order to minimize the economic expediency of such activities.

In general, the foregoing, in our opinion, makes it possible to propose to expand the preventive effect of imprisonment in accordance with the specified norms by envisaging a fine as an additional punishment. This contributes to the enhancement of the punitive

effect of punishment, which in aggregate will affect not only personal freedom, but also property interests that underlie the criminal motivation of the investigated acts (Goryainov, 2015). Accordingly, general and private prevention from such punishment will be of a deeper nature, and rely on the greater undesirability of the onset of the criminal legal consequences of the committed crimes (Zedner, Ashworth, 2019).

We believe it is permissible to make an appropriate addition to the criminal legislation. The proposed change is of a casuistic nature, since it correlates the features of the application of punishment with specific types of criminal offenses. This technique is generally typical for the legal technique used in the criminal law (Pronina, 2016).

4 CONCLUSIONS

Considered in the course of the research carried out by the author, the features of criminal legal means aimed at preventing the mercenary crime of convicts, as well as some areas of their implementation in foreign countries, made it possible to draw conclusions that are the theoretical basis necessary for the implementation of the tasks of criminal legislation, especially crime prevention.

The result of this work is also substantiated proposals and recommendations aimed at improving certain preventive measures of a criminal nature and the mechanism for their implementation in the system of criminal-legal prevention of mercenary crimes committed by convicts, which contributed to the solution of the tasks.

Based on the foregoing, it can be argued that the use of criminal law measures in the prevention of mercenary crimes committed by convicts should be carried out in the following directions:

- the classification of the means of criminal-legal prevention of mercenary crime of convicts proceeds from two criteria: the presence of norms, the dispositions of which mention selfish motivation and the actual content of these norms, which presuppose its presence.

- in order to improve the mechanism of criminal-legal prevention of mercenary crimes of convicts, including in the framework of preventing the development of professional crime and criminalization of the individual, it is necessary to amend the current Criminal Law of Russia, providing for the institution of repetition;

- in all *corpus delicti*, in which it is necessary to include the institution of repetition, a fine should be

provided as an additional punishment to imprisonment, which in turn will significantly increase the preventive effect of punishments for mercenary crimes committed by convicts due to criminal law impact on their property interests.

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