OBSERVANCE OF HUMAN RIGHTS IN PRE-TRIAL DETENTION CENTRES OF THE PENAL ENFORCEMENT SYSTEM

INTRODUCTION

One of the strategic guidelines for Russia's long-term socioeconomic development is its transition to an innovative, socially oriented type of economic development. In relation to this process, one of the target guidelines is the achievement of high standards of human well-being. At the same time, the first of the named guidelines is intended to be achieved through the development of human potential, that is, the creation of favorable conditions for nurturing each individual's abilities. This can be achieved by reducing the crime rate and achieving high standards of personal safety by ensuring security, law and order, and favorable conditions for the implementation of economic and social initiatives. Achieving each of these benchmarks and providing conditions for their implementation in the development of the Russian Federation can eliminate the limitations that hinder the human potential and possible economic activities of a fairly significant part of the country's working-age population. These limitations include the excessive use of criminal-legal repression measures related to the maximum possible restriction of the right to work; the right to decent remuneration for professional, business, or other labor activities; and the right to an independent choice of areas of self-realization due to the isolation of citizens from society and their acquisition of the status of a “convict.” It is about the problems related to the observance of human rights in correctional institutions, including the conditions of being in pre-trial detention centers. The unjustified expansion of the use of such criminal punishments as imprisonment, along with an increase in the number of Russian citizens involved in criminal environments, contributes to the self-determination of crime.

To date, an increasing number of convicts do not have access to a wide range of opportunities to develop their professional, creative, and other personal potential due to the status they have acquired. A preliminary analysis of the official data published by the Russian Federation indicates a decrease in the facts of the appointment of this type of criminal punishment for committing crimes, thereby indicating a decrease in the number of persons held in pretrial detention centers and correctional institutions. Thus, according to the Federal Service for the Execution of Punishment of the Russian Federation, 478,714 people are kept in the institutions of the penal system (-4,118 people as of January 1, 2021). This group includes 373,917 people (-2,498 people) serving their sentences in 670 correctional facilities, of whom 29,427 (-326 people) are serving their sentences in 106 penal settlements; 1,980 (+13 people) are serving their sentences in seven correctional facilities for those sentenced to life imprisonment and persons for whom the death penalty by way of pardon was replaced by imprisonment; 102,575 (-1 645 people) are kept in 209 pre-trial detention centers and 86 rooms serving as pre-trial detention centers; 1,276 are serving their sentences in eight prison facilities (+28 people); and 946 people (-3 people) are kept in 18 juvenile correctional facilities.

A similar trend in the dynamics of the number of those sentenced to imprisonment is noted by the Judicial Department at the Supreme Court of the Russian Federation. Meanwhile, a more detailed analysis of statistical data on the custodial sentence by the Russian Federation courts revealed a certain inconsistency: the indicator of the number of persons sentenced to imprisonment during 2015–2018 among the entire mass of those convicted by the Russian Federation courts constantly changed within the range of 27%–29%, while the highest indicator was noted in the last reporting period in 2018. During that year, those who were imprisoned as a punishment for a crime comprised 28.9% of convicts, indicating an increased proportion of those sentenced to imprisonment among all persons convicted of crimes within the Russian Federation territory.
These data may indicate the presence of a problem with respect to the observance of human rights in correctional institutions and/or the emergence of difficult problems in the process of their application. Such problems should be considered in their entirety, as their fragmentary study may be associated with a violation of the principles of justice and humanism (BUCHDADI et al., 2020).

Statistics show that the courts are very willing to apply the relevant norms (in 2018, the share of persons conditionally sentenced to imprisonment among the total mass of those sentenced to this type of criminal punishment was 89%; the share of persons released from punishment on grounds not related to amnesty, with increases every year; in 2017 and 2018, the courts of the Russian Federation were exempted from criminal liability with the appointment of a court fine 20,044 and 33,329 accused, respectively), which can be recognized as an undoubtedly positive phenomenon only if such court decisions are associated with adequate consideration of the facts positive post-criminal behavior of accused or convicted persons, circumstances indicating positive changes in the convict’s attitude to legal norms and social values and his desire to refrain from continuing criminal activity, respecting rights in pre-trial detention centers, correctional institutions during law enforcement intelligence operations.

LITERATURE REVIEW
The penal enforcement aspect of these problems was the subject of some scientific research, including A.V. Brilliantov (2015), V. Golubovski (2019), D.V Gorbun (2013), S.A. Gorkina (2008), G. D. Dolzhenkova (2015), S.I. Demetyev (2008), S.N. Dendeber (2012), V.A. Eleonsky (2008), A.P. Isichenko (2016), O.V. Filimonov (2009), A.M. Fum (2016), M. Kostyuk (2019), E. Kunts (2019), O.N Uvarov (2021), I.Ya. Foinitskiy (2000), E.N. Zhevlakov (2015). The issues of differentiation and individualization of criminal liability through the establishment and application of the grounds for exemption from criminal liability and punishment have been studied by as S.I. Kurganova (2009), A.S. Mikhlin (2008), E.E. Novikov (2008), O.G. Perminov (2010), A.F. Sizyi (2008), V.I. Seliverstov (2010), V.A. Utkin (2007), A. Zubkov (2013). The issues of legal regulation of law enforcement intelligence operations in the penal system were considered by A.P. Isichenko (2016), A.M. Fum (2016), et al. Meanwhile, a special comprehensive study of the criminal-legal and criminal-executive aspects of the problems of observance of human rights in correctional institutions, in pre-trial detention centers has not yet been carried out. Thus, this scientific manuscript is the first comprehensive theoretical study covering a complex of problems related to the directions of improving the technology of creating and the practice of applying the provisions of criminal and penal legislation on the observance of human rights in correctional institutions.

MATERIALS AND METHODS
To fully study issues related to the observance of human rights in correctional institutions – including in pre-trial detention centers – during law enforcement intelligence operations, it seems necessary in the process of conducting a scholarly study to use the methods of scientific research, including, inter alia, dialectical, formal-logical, historical-legal, and comparative-legal research methods. The Russian penal enforcement legislation of the norms regulates and provides for signs and procedures for the execution of punishments related to isolation from society, the grounds and procedures for imposing a suspended sentence, the essence and criminal-legal consequences of a criminal record, as well as the grounds for exemption from criminal liability and punishment in connection with the positive post-criminal behavior of persons guilty of committing crimes or in the presence of other circumstances.

In the process of conducting scientific research, it seems appropriate to study the relevant scientific literature on criminal law topics, actively refer to the results of scientific research in other areas of knowledge, in particular, in the field of criminal executive, civil, administrative law, criminology, philosophy, sociology, psychology, economic theory, etc. To properly study the practice of applying the abovementioned norms of criminal and penal legislation, various methods of interpreting normative material are widely used, including logical, systematic, and philological, as well as various methods of collecting and processing empirical material, in particular, a specific sociological method, as well as the method of documentary observation.
RESULTS

The Federal law “On the detention of suspects and accused of committing crimes”, No. 103-FZ, as of July 15, 1995 contains Art. 34, according to which law enforcement intelligence operations in detention centers are aimed at detecting, preventing, suppressing and solving crimes in the manner prescribed by law. A comprehensive analysis of the norms of law enforcement intelligence and other legislation allows the following conclusions: The law of law enforcement intelligence (Art. 13) establishes that criminal intelligence units of field investigation agencies have the right to conduct law enforcement intelligence operations in pre-trial detention facilities together with their staff. It follows from this that the employees of pre-trial detention centers must at least ensure the conduct of law enforcement intelligence operations by other subjects of law enforcement intelligence or participate in their joint conduct.

The logical interpretation of the analyzed legislative norm leads to the conclusion that criminal intelligence units of pre-trial detention centers can carry out law enforcement intelligence operations independently, since the restriction on their autonomous conduct is addressed by other subjects of law enforcement intelligence operations. In this case, one should be guided by the prescription of the Criminal Procedure Code of the Russian Federation, according to which if it is necessary to carry out law enforcement intelligence operations with the written permission of the inquiry officer, investigator, or the court in which the criminal case is being processed, meetings of an employee of the field investigation agencies with a suspect are allowed (Part 2 of Art. 95 of the Criminal Procedure Code of the Russian Federation).

The provisions of Art. 84 of the Penal Enforcement Code of the Russian Federation on the criminal intelligence for convicts who escape from a correctional institution, as well as those who evade serving imprisonment, should be extended to criminal intelligence units of pre-trial detention centers since they contain convicts left to perform work on economic services (Art. 77 of the Penal Enforcement Code of the Russian Federation), as well as those awaiting transfer to detention centers. The departmental normative act on the organization and tactics of law enforcement intelligence operations in pre-trial detention centers and prisons established that their criminal intelligence units are full subjects of law enforcement intelligence operations in the penal system.

DISCUSSION

Correctional institutions are specialized bodies of the state that execute punishment in the form of imprisonment for a certain time period up to life imprisonment, which together form a system for serving a sentence of imprisonment (RAVENA and MAHMUD, 2019). Convicts serve a sentence of imprisonment in correctional institutions within the territory of the constituent entity of the Russian Federation in which they lived or were convicted, with the exception of cases established by law. When appointing the type of correctional institution, it is necessary to consider those provided for in Art. 58 of the Criminal Code of the Russian Federation criteria: category of crimes, form of guilt, type of punishment imposed (for a certain period or for life), term of imprisonment, type of recurrence of crimes, fact of serving a previous sentence in the form of imprisonment, gender, age. The right to carry out law enforcement intelligence service is enshrined in Art. 11 of the Law of the Russian Federation “On law enforcement intelligence operations in the Russian Federation” as of March 13, 1992, and directly - in Art. 14 of the Law of the Russian Federation “On Institutions and Bodies Executing Criminal Sentences in the Form of Imprisonment” as of July 21, 1993.

According to Art. 84 of the Penal Enforcement Code of the Russian Federation, the tasks of law enforcement intelligence operations in correctional institutions are: ensuring the personal safety of convicts, staff of correctional institutions, and other persons; identification, prevention, and disclosure of crimes and violations of the established procedure for serving sentences that are being prepared and committed in correctional institutions; search in accordance with the established procedure of convicts who have escaped from correctional institutions, as well as convicts evading imprisonment; assistance in identifying and solving crimes committed by convicts before arriving at the correctional institution. In these tasks, the first two can be considered as having a real relation to the functioning of the correctional
Observance of human rights in pre-trial detention centres of the penal enforcement system

institution, the rest, logically, should be dealt with by the relevant territorial bodies on the ground.

But even the first two tasks, this is ensuring security and detecting crimes, are solved with the help of special law enforcement intelligence services that are part of the correctional institution, only in the post-USSR countries, and the activities of these units actually complicate the implementation of the goals of the penal system. The solution to this legal problem causes certain difficulties for the lawyers of the penal system, who are working to bring the Criminal Code of the Russian Federation in line with international standards.

In practice, law enforcement intelligence operations in a correctional institution boil down to the recruitment of agents by all available means, most often, since the prisoner has no freedom of choice. If compared with foreign correctional institutions, then the Polish prison system, the reform of which is considered the best reform in Poland, was freed from this kind of “vestiges” back in 1989. Polish system solves problems in other ways: by training all categories of employees to closely monitor the situation in the institution and identify early signs of possible disasters. The only objection that common sense accepts is the difference in the structure of the systems; they have prisons, which means a large concentration of prisoners in one room, and from that, the situation can become more dangerous. They have semi-open regimes when the wards are open from 08:00 to 20:00, and the prisoners can move freely within their department. Of course, not everyone falls into such a regime, but people, according to experts, are able to refrain from violence.

It is obvious that the situation in women’s jails is fundamentally different from men’s. When asked where it is more difficult to work, in a women’s or men’s jail, an experienced employee replied that in a men’s jail, when one just walks around the local zone, one should also watch the situation with their back, listen to conversations, to sounds, even to thoughts, since are in constant danger. It is much easier to work with women, because they do not pose a danger. Nevertheless, the conditions of detention of female correctional institutions are not much different from those of male penitentiary institutions: the same regime and law enforcement intelligence operations, the same approach, in terms of severity, although the degree of their danger to others is simply incomparable. Female correctional institutions are staffed with criminal intelligence staff, as well as male ones. These people must act or create the appearance of activity, prove their importance and necessity. Moreover, they are very active. In every institution, there is a constant dispute between the criminal intelligence and educational parts, and often not in favor of the educational one.

According to Art. 115 of the Penal Enforcement Code of the Russian Federation, a penal isolation ward is one of the penalties applied to those sentenced to imprisonment, among such measures as a reprimand and a disciplinary fine. A convict can end up in a penal isolation ward for non-fulfillment of the plan, refusal to work (since 2001, this violation is again considered malicious), for rudeness with the staff or with convicts, for smoking in the wrong place, for lesbian relationships, and much more, since the decision remains with the administration and depends on the conscience and responsibility of the head of the jail. But the penal isolation ward is the domain of criminal intelligence workers, here and under strict conditions of detention, they recruit agents for themselves. Here violators are often beaten, and other special means are applied to them, for example, handcuffs. Usually, a penal isolation ward is a ward for two or four people, where shelves that replace sleeping places are chained to the wall throughout the day. Some jails, instead of benches, have something like round stumps with a diameter of 15-20 cm. The shelf rests on these stumps when it is unfastened from the wall. It is impossible to sit on such stumps, it hurts, and they leave bruises on the buttocks. A more humane device is benches. However, the presence of a bench can also be a punishment if its iron frame protrudes crookedly above the wooden seat.

CONCLUSION

The conclusions can be useful to a Russian legislator modernizing and humanization means of the criminal executive legislation order, designed to reduce the number of people sentenced to imprisonment and the number of people with a criminal record. These improvements include conducting law enforcement intelligence operations. The recommendations can be
useful to the practitioners by the application of the signs and procedures for conducting law enforcement intelligence operations. The most effective means of combating crime is punishment, which includes punitive and educational elements, assigned by the court to a person who is guilty of committing a crime. Punishing crimes reveals the direction of the state’s criminal policy; punishment expresses a negative, legal and moral assessment of the criminal act. In practice, tougher punishments do not help to reduce crime. The severity of the punishment must correspond to the degree of social danger of the crime. The type of correctional institution depends on the factors specified in Article 58 of the Criminal Code of the Russian Federation. The types of correctional institutions are listed in Article 74 of the Penal Execution Code of the Russian Federation and include correctional facilities, juvenile correctional facilities, prisons, and medical correctional facilities. The procedure for sending convicts to a correctional institution is determined by the Ministry of Justice of the Russian Federation.

It is quite difficult to adapt to conditions in detention centers, especially for first-time convicts. They face certain difficulties as new behavioral and lifestyle requirements are imposed on them by the institution and by the informal social environment. All this causes in convicts a state of anxiety and emotional instability since a person is directly dependent on their social environment. The regime in correctional institutions is a certain procedure for the execution and serving of a sentence, which ensures the protection, isolation, constant supervision, and realization of the rights and obligations of convicts. The regime also includes the conditions of detention of convicts, depending on the type of correctional institution.

The regime establishes rules of conduct for convicts and staff, which ensure order in correctional institutions, carry out educational work with convicts and facilitate the implementation and supervision of educational activities for convicts. In correctional institutions, a modern system of serving the sentence has been established, that is, if the convict shows signs of correction, for example, the convict is conscientious about work, does not violate the established rules, then the convict’s conditions are upgraded. Thus, the convict’s rights are expanded. If the convict violates the established procedure and/or does not perform the entrusted work, the convict's rights and conditions deteriorate. One of the main tasks facing correctional institutions is the correction of convicts. Since serving a sentence occurs in isolation from society, family and loved ones, in a specific situation in correctional institutions, it can greatly affect the psyche and makes surviving imprisonment difficult.

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O objetivo do manuscrito científico é estudar os aspectos teóricos e práticos da observância dos direitos humanos enquanto cumpre pena em instituições correcionais durante operações de inteligência policial, incluindo a permanência em centros de detenção preventiva. Os resultados da análise científica revelam que uma das principais tarefas das instituições correcionais é a correção dos condenados. O cumprimento da prisão isoladamente da sociedade, da família e dos entes queridos, no contexto específico das instituições correcionais, afeta muito a psique dos condenados e, ao mesmo tempo, permite que eles sobrevivam à sua permanência nessas instituições. Nesse contexto, a observância dos direitos humanos enquanto permanece em centros de detenção preventiva é de particular importância. As condições dependem tanto do regime da instituição correcional quanto dos comportamentos dos condenados. Se eles não violam a ordem estabelecida e tratam tudo de boa fé, então eles recebem incentivos que estimulam a correção e incentivam o comportamento legal em liberdade.

Keywords: Human rights. Correctional institutions. Pretrial detention center. Imprisonment, punishment. Law enforcement intelligence operations.

Palavras-chave: Direitos humanos. Instituições correcionais. Centro de prisão preventiva. Punição. Operações de inteligência da polícia.

The purpose of the scientific manuscript is to study the theoretical and practical aspects of the observance of human rights while serving a sentence in correctional institutions during law enforcement intelligence operations, including a stay in pretrial detention centers. The scientific analysis results reveal that one of the main tasks of correctional institutions is the correction of convicts. The serving of imprisonment in isolation from one’s society, family, and loved ones, within the specific context of correctional institutions, greatly affects convicts’ psyches while also enabling them to survive their stay in such institutions. In this context, the observance of human rights while staying in pretrial detention centers is of particular importance. The conditions depend both on the regime of the correctional institution and on the behaviors of the convicts. If they do not violate the established order and treat everything in good faith, then they are provided with incentives that stimulate correction and encourage lawful behavior in freedom.

Keywords: Human rights. Correctional institutions. Pretrial detention center. Imprisonment, punishment. Law enforcement intelligence operations.

Palabras-clave: Derechos humanos. Instituciones correccionales. Centro de prisión preventiva. Encarcelamiento, castigo. Operaciones de inteligencia policial.