ABSTRACTS

CRIMINAL LAW

Valeev Marat T. Tomsk State University (Tomsk, Russia). ACCOUNTING FOR THE CATEGORIZATION OF CRIMES IN THE CONSTRUCTION OF THE SYSTEM OF PUNISHMENT.

Keywords: categorization of crime; system of punishment; typical sanction; criminal penalties.

The paper considers the categorization of crimes, its impact on the criminal law standards that regulate the system of penalties. Some disadvantages of the existing system of punishment, its gaps, elements that do not ensure effective implementation of the purposes of the system are described. Shortcomings of the categorization fixed in the current criminal legislation are given. The author proposes a new approach to the construction of standards in Article 15 of the Criminal Code of the Russian Federation ("Categories of Crime") by making crimes categorization tripartite depending on the type of sanctions applied, and by including all types of criminal penalties fixed in Article 44 of the Criminal Code of the RF, not only imprisonment. In the author's opinion, when categorizing the legislator unreasonably prefers imprisonment as a criterion of division. This preference is due to the long tradition of the law enforcer in sentencing, the availability of imprisonment in most of the sanctions of provisions of the Special Part of the Criminal Code of the RF, the virtually unchanged content of this form of punishment, and other reasons. Meanwhile, the very sign of "blameworthiness" of the crime is not limited to imprisonment.

The proposed system will avoid "distortions" in assessing the gravity of crimes by various types of punishment. It will diverge from a popular, but false, opinion, according to which the basic principles of the system of penalties is the location of punishment in Article 44 of the Criminal Code of the RF from less to more repressive; it will assess the danger of an offense to the public in the Special Part of the Criminal Code of the RF by indicating the category of the crime. It will facilitate solving a number of problems connected with cases of substitution of punishment, criminal law retroactivity application; it will help standardize assessment of the danger of criminal acts and simplify solution of other problems.

The author notes that some types of punishment, other than imprisonment, are partially "attributed" to crime categories in the current legislation in relation to death penalty, life imprisonment, arrest, forced labor, compulsory labor, deprivation of special, military or honorary title, class rank, or State awards, and fines.

Karelin Dmitry V. Tomsk State University (Tomsk, Russia). ON SELECTED PROBLEMS OF COERCIVE MEASURES OF EDUCATIONAL INFLUENCE APPLICATION TO MINORS IN CASES OF EXEMPTION FROM CRIMINAL RESPONSIBILITY.

Keywords: criminal responsibility of minors; exemption of minors from criminal responsibility; coercive measures of educational influence; increase of efficiency of measures alternative to criminal responsibility of minors.

According to Paragraph 2 of Article 87 of the Criminal Code of the Russian Federation, "either punishment or coercive measures of educational influence may be applied to juveniles who have committed crimes". However, it has not always been so. It was at the end of 2003 that legislators made coercive measures of educational influence a priority, and it was not random. Back in 2000, the Supreme Court of the Russian Federation in Decree No. 7 of February 14 "On Juvenile Crimes" (inoperative) drew attention of the lower courts to the need of elaborating the choice of retaliation for juvenile offenders with preference to coercive measures of educational influence, other things being equal. There is a similar guideline in the currently effective Decree No. 1 of the Plenum of the Supreme Court of the Russian Federation dated February 1, 2011 "On the judicial practice of application of law regulating the specifics of criminal responsibility and punishment of minors". By lawmakers it is these coercive measures of educational influence that should become a real alternative to criminal responsibility and punishment of juveniles. This, in turn, corresponds to the international obligations Russia has undertaken and is an expression of the trend of a consistent humanization of criminal legislation and practice of the treatment of juvenile offenders. Still, the official crime statistics shows that for the past ten years the practice of coercive measures of educational influence has not changed. The share of minors exempted from criminal responsibility in connection with the application of these measures is averagely in the range of 2–5 % of the total number of juvenile offenders in Russia. This state of affairs is hardly satisfactory. Therefore, addressing the problems of application of these measures is urgent.

CRIMINAL PROCEDURE

Andreeva Olga I. Tomsk State University (Tomsk, Russia). SOME ASPECTS OF LIMITATION ON POWER AND AUTHORITY OF THE STATE, STATE AGENCIES AND OFFICIALS IN CRIMINAL PROCEEDINGS.

Keywords: purpose of criminal procedure; ratio of rights and responsibilities of state, state agencies, officials and individuals in criminal proceedings; balance of private and public interests; limitation of powers; specifics of criminal procedure relations.

The paper discusses the need to limit the powers of the state, state agencies and officials in criminal proceedings. Basing on the model of interrelated and integrated relations of the state with the system of legislation and natural law with the human and legal values, and considering the state not only as a guarantor of natural rights and freedoms of the individual, but also as an institution that has the power of coercion, the author comes to a conclusion that the purpose of the criminal procedure is to protect individuals, society and the state from the effects of a crime committed through the use of criminal law, as well as to protect indi-

viduals and society from illegal and arbitrary actions (or inaction) on the part of state agencies aimed at the use of coercion and restriction of rights and freedoms of person and citizen. As a consequence, the duty of authorized officials to protect individuals, society and the state from the effects of a crime committed through the use of the criminal law does not preclude different responses of the state to the committed socially dangerous acts. Criminal procedure must define the sphere for the state to implement its powers in full when solving tasks; the sphere where the power of the state should be limited; the sphere where the state can not interfere in.

The origin of the need to limit the powers of the state is to be found in the general legal position of the individual in a state, universal human values, which is fundamental for a legal state.

Implementation of state powers to protect individuals, society and the state from the effects of a committed crime should depend on the degree of social danger of the offense; on the guilty plea of an indictee; on the remedial measures taken; on the consent of a victim of crime to settle the conflict without bringing the person to justice. Law defines cases when the state must give the person an opportunity to resolve the conflict that arose as a result of a crime themselves.

Human rights determine the rules which govern the relations between the individual and public officials in the criminal procedure.

In such circumstances, the ability of public officials to apply coercion and restriction of human rights must be strictly regulated by law, and the abuse of the right should be subject to ban.

Addressing the issues of mutual responsibility of the state, state agencies, and individuals, of measures of legal responsibility for both the state and the person for failure to perform and improper performance of duties, the author concludes that the state shall be liable to the person for ineffective legal regulation of criminal procedure relations that lead to violations of the rights and legitimate interests of the person by authorized state agencies and officials, as well as for unlawful (illegal) actions (or inaction) of state agencies and officials, which led to the violation of individual rights in criminal procedures.

Volynets Kristina V. Tomsk State University (Tomsk, Russia). WAYS TO IMPROVE THE GUARANTEE SCHEME OF IMPLEMENTATION OF THE REASONABLE TIME FOR CRIMINAL PROCEEDINGS PRINCIPLE IN THE COURT OF FIRST INSTANCE.

Keywords: criminal proceedings; reasonable time; guarantees.

Currently, the Russian Federation has a number of rules designed to ensure the implementation of the principle of reasonable time for criminal proceedings. Some of them were made before the principle was fixed in the Russian law: establishment of the period of preliminary investigation, start of the trial, appeal, and simplified procedure (Chapter 40, 40.1 of the Criminal Procedure Code of the Russian Federation); regulation of the call out procedure of the parties to criminal proceedings to the investigator, interrogating officer; measures of procedural coercion to ensure their attendance, etc. Experience shows they have not been quite efficient. Other rules appeared simultaneously with the norm that fixes the principle of reasonable time for criminal proceedings in the Criminal Procedure Code of the Russian Federation. They consist in establishment of the right of the parties concerned in case of delaying the trial to apply to the Presiding Judge with a statement to accelerate the proceedings, as well as in regulation of damages for the breach of the right to trial within a reasonable time. As practice shows, these guarantees are not sufficient enough. For full implementation of the principle of reasonable time for criminal proceedings in the court of first instance there is a need to create additional safeguards that would eliminate barriers that help delay criminal trials.

When making such guarantees special attention should be paid to the regulation in the Criminal Procedure Code of the Russian Federation of time periods of criminal trials materially, to the reform of the institution of the return of the criminal case to the prosecutor, and to the improvement of standards of the Criminal Procedure Code of the Russian Federation to ensure the attendance of persons summoned to court.

Dilna Zoryana F. Ivan Franko Lviv National University (Lviv, Ukraine). PROSECUTOR'S PARTICIPATION IN THE ENFORCEMENT OF COURT DECISIONS BY LAW OF UKRAINE.

Keywords: prosecutor; prosecuting official; procedural status of prosecutor; stage of execution of court decisions; prosecutorial supervision.

In this paper the most pressing issues concerning the procedural status and functions of the prosecutor in the enforcement of court decisions in criminal proceedings in Ukraine are presented for this stage of proceedings has not been sufficiently investigated yet, and the status of the participants of this stage, including the prosecutor, remains undetermined. The Constitution of Ukraine, the Law "On Prosecutor's Office" as well as the orders of the Prosecutor General state the functions and powers of the prosecutor in the actual execution of the sentence. Whereas in the current legislation there is no mentioning of the status and powers of the prosecutor in the enforcement of court decisions as the final stage of proceedings, at which a large number of issues are settled judicially that arise in the execution of the sentence and after it. The prosecutor is only mentioned as a participant in the proceedings at this stage. Accordingly, in practice there are a lot of questions about the function the prosecutor performs when participating in the court hearings, about the point the prosecutor can start executing powers at this stage of proceedings, and whether this participation mandatory.

This predetermined the relevance of the topics that are discussed in this paper, as it highlights the most problematic issues that concern the participation of the prosecutor in criminal proceedings when solving the tasks of execution of court decisions, analyzes current legislation that regulates these issues, and on this basis grounds the proposals on how to improve them.

Mezinov Dmitry A. Tomsk State University (Tomsk, Russia). "OBJECTIVE TRUTH" IN CRIMINAL TRIAL: ON DISCUSSION OF THE BILL OF THE INVESTIGATIVE COMMITTEE OF THE RUSSIAN FEDERATION.

Keywords: Criminal Procedure Code of the Russian Federation; objective truth; criteria for finding objective truth; credibility; legal (judicial) truth.

In connection with the proposal of the Investigative Committee of the Russian Federation of a bill on introduction of the Institute for establishment of the objective truth in a criminal case in the Criminal Procedure Code of the Russian Federation an academic debate arose. The opinions of experts in procedural law are critically analyzed on the need, possibility and criteria of finding the so-called objective truth in the criminal trial, and, as a consequence, on the advisability of introducing the relevant changes into the domestic criminal procedural law, and fixing the concept "objective truth" in it. The paper proves that the desire of the court and prosecution officials to establish the true circumstances of the criminal case if they observe the criminal procedure law limits corresponds to the interests of the society and the state, as well as to the rights and interests of the individual. At the same time, the author does not consider it right to fix in law the phrase "objective truth", justifying the conclusions about the absence of precise criteria to find the objective truth in a criminal trial, about the divergence of the concepts of "objective truth" and "reliable conclusions about the established circumstances of a criminal case". The author finds it appropriate for the domestic criminal procedure to follow the "beyond reasonable doubt" standard in the formation of inner conviction of the judge as a criterion to achieve reliable conclusions about the established circumstances of a criminal case; he considers it possible and necessary to achieve such conclusions in the course of evidence in a criminal case and interprets them as legal (judicial) truth.

Still, the author believes the proposal of the Investigative Committee of the Russian Federation to fix in the criminal procedure law the duty of the court and prosecution officials to take all necessary measures to comprehensive, complete and objective investigation (study) of the circumstances subject to proof as relevant to achieve reliable conclusions about the circumstances of a criminal case is rational and expedient.

Mikhailov Aleksander A. Tomsk State University (Tomsk, Russia). THE PROSECUTOR'S RIGHT TO MANAGE THE CHARGES IN THE COURT AND ITS LIMITS.

Keywords: criminal trial; court of first instance; prosecutor's refusal to charge; change of charges in court.

The Anglo-Saxon and continental types of criminal proceedings in the course of their historical development developed their own rules relating to the change of charges in the court of first instance. The Anglo-Saxon criminal procedure does not allow full and substantial change of the charges in the court of first instance, as well as changes in charges to deteriorate the situation of the defendant, at the same time it provides for other rules and means to protect the interests of the criminal justice system and the achievement of its objectives to a certain extent. Such rules (means) are divisibility of claims in the accusation, which follows from the doctrine of implied ("inclusive") offenses, alternative charges, the possibility in some cases of prosecution and conviction for the same offense.

In contrast, the continental criminal procedure, whose purpose is to achieve the objective (material) truth, allows broader changes of charges including deteriorating the situation of the defendant, while establishing some rules to ensure the defendant's right to defense.

It is concluded that such features of the continental criminal procedure as purpose – the achievement of the objective (material) truth, and the active role of the court in the trial due to the high degree of publicity in its activities have had a significant influence on the approach to the change of charges in court, according to which the subject of changing charges in the court of first instance in a criminal trial of the continental type is the court only, while the prosecutor merely expresses an opinion, stating the need to make a change in the charges.

The main purpose of the criminal procedure of the Anglo-Saxon type (UK, USA) is the solution of a conflict that exists due to the commission of the crime, and the activity of the court is mainly manifested in governing the process. The court is passive when proving the facts of a criminal case. The public prosecutor is the representative of the state with all the rights to rule the accusation – criminal lawsuit, including the material law of the state to punish the offender. In this case, these rights are discretionary.

In the criminal procedure of the continental type (France, Germany), the main purpose is to achieve the objective (material) truth, the court is responsible for this task in the court of first instance. In this connection, the court is an active subject of proof and must in all cases to consider the accusation, which indicates the high degree of manifestation of publicity in the court activity. The state and society do not provide the prosecutor in the continental criminal trial with the opportunity to dispose of the material law to punish the offender. Thus, the prosecutor has no regulatory powers against accusation.

Piyuk Aleksey V. Megion City Court (Megion, Russia). INSTITUTE OF SPECIAL ORDER OF COURT DECISION MAKING AT THE CONSENT OF THE PERSON WITH THE CHARGES BROUGHT NEEDS IMPROVEMENT.

Keywords: purpose of criminal procedure; principle of publicity; simplified criminal procedure; special order of court decision making, type of criminal proceedings.

Special order of the court decision making at the consent of the person with the charges brought regulated by Chapter 40 of the Criminal Procedure Code of the Russian Federation should be amended in the way to ensure the implementation of the function of the Russian criminal proceedings. To solve the existing problems the court considering a criminal case in a simplified procedure should be given the right to examine the evidence in order to establish the circumstances listed in Article 73 of the Criminal Procedure Code of the Russian Federation . Since the purpose of criminal proceedings is to make a grounded, fair judgment, the court must be able to examine the evidence to the extent it needs. With this approach, the provisions of Article 317 of the RF Criminal Procedure Code on the inadmissibility of the appeal of a sentence made in a special order, based on its inconsistency with the real circumstances, should be excluded from the criminal procedure law. With this approach it can be argued that the purposes and principles of the Russian criminal proceedings are the same, typical of the continental criminal procedure.

Trubnikova Tatiana V. Tomsk State University (Tomsk, Russia). COURT IMPARTIALITY IN RF CRIMINAL PROCEDURE: UNDESERVED NEGLECT.

Keywords: right to fair trial; right to judicial protection; impartiality of court.

This paper argues the importance of the address of the Russian criminal procedure science and lawmakers to the problems of ensuring impartiality of the court. The causes of difficulties in the implementation of this principle in the criminal justice of Russia are analyzed. Among them is underestimation of impartiality of the court by legislators and practitioners, as well as the lack of attention to it by experts in Russian criminal procedure.

The author analyzes the gaps of the Russian legislation, the lack of sufficient information about the need to ensure the impartiality of the court in it; gives data on the history of references to it in the Russian legislation, and the traditional interpretation of the content of impartiality in the Russian legal doctrine. Next, the paper demonstrates the need for a clear definition of the content and the starting point of the impartiality of judges in the Russian criminal procedure, the importance of establishing a system of guarantees of its implementation in criminal justice, which, as the author shows, should be done with the support of the legal philosophy of the European Court of Human Rights. By analyzing the legal position of the ECHR on issues of impartiality, the author argues the independent nature of impartiality of the court, its "irreduceability" to the independence of the court or the adversariality of the criminal trial, and shows the differences in the legal positions of the ECHR on impartiality as compared to the Russian legal doctrine, including provisions, reflected in the acts of the Constitutional Court of the Russian Federation. The paper also shows the drawbacks of the modern Russian criminal procedure law that does not create sufficient guarantees to implement impartiality of the court, in comparison with the achievements of the arbitration procedure law of Russia that adopted legal positions of the ECHR and on its basis created a promising system of guarantees of impartiality of the arbitration court. The author recommends an analogue of such a system to be used in the criminal procedure legislation of Russia.

Sheifer Semyon A., Kosheleva Marina A. Samara State University (Samara, Russia). SHOULD WE ABANDON ADMISSIBILITY AS A REQUIRED PROPERTY OF EVIDENCE?

Keywords: pre-investigation check; verification tools; other procedural proceedings; admissibility of evidence; procedural form of evidence.

On the basis of analysis of the provisions of the Federal Law of March 4, 2013 and academic papers the emergence is stated of the trend to the actual release of claims for the requirements of admissibility of evidence in the interests of the speed of investigation. This trend is critically assessed, the importance is stressed of the institution of admissibility as a means of preventing crime and ensuring the rights of citizens, the need for its comprehensive strengthening and compliance is expressed.

A legal possibility of using the results of preliminary inquiries as evidence does not largely meet the requirements of the Criminal Procedure Code of the Russian Federation stated in Articles 74 and 75 concerning admissibility of evidence. Without admissibility, these results are unlikely to be considered evidence. Moreover, it is impossible to rank them as statutory types of evidence (Part 2 of Article 74 of the RF Criminal Procedure Code) or other documents, for according to Article 84 of the RF Criminal Procedure Code the latter must be obtained, reclaimed and presented in the order of Article 86 of the RF Criminal Procedure Code, that is, by the proceedings prescribed by law. One cannot consider legitimate attempts by some researchers to classify as other documents any attributable information obtained without investigation, that is, infinitely expanding the amount of this kind of evidence and denying the concept of evidence of necessary clarity.

Changes made in the criminal procedure by the Federal Law of March 4, 2013 have a narrow pragmatic purpose – to extend the tasks of the stage of initiation of criminal cases by means of a sharp increase of the cognitive activity at this level, equating them to the tasks of preliminary investigation and their resolution by simplified procedures that facilitate the activities of investigation bodies. This purpose became particularly obvious in the establishment of an inquiry in a reduced form performed in a radically simplified investigation (Chapter 32^1 of the RF Criminal Procedure Code).

Refusal of admissibility of evidence clearly expressed in the Federal Law of March 4, 2013, as well as in a number of academic papers, despite its preservation in the norms of the RF Criminal Procedure Code speeds up the proceedings, but it can cause significant harm to the domestic proceedings, since it allows to build it on questionable evidence and on the substitution of proven tools of their acquisition by non-procedural analogs. History shows that disregard for the procedural form is capable to generate gross violations of law and of the rights of citizens. Thus, the institute of admissibility of evidence requires a comprehensive strengthening and strict compliance in practice. The negative experience of the application of new legal provisions expected in the future may confirm this assumption.

Yakimovich Yuriy K. Tomsk State University (Tomsk, Russia). ON FURTHER DIFFERENTIATION OF THE CRIMINAL PROCEDURE IN RUSSIA.

Keywords: criminal proceedings; differentiation of criminal procedure.

By criminal procedure one should understand a certain type of criminal procedure activity; an independent institute of criminal procedure law; an institute of criminal procedure legislation, whose norms regulate the criminal procedure activities within an independent multi-stage proceedings.

The differentiation of criminal proceedings implies classifying the criminal procedure not only by the complexity of the procedural form, but also by the aspect of the proceedings expressed in its object and tasks. By this criterion all criminal procedures can be divided into 1) basic – criminal cases proceedings; 2) ancillary – proceedings arising in the process of real sentence execution (not to be confused with the stage of sentence execution); 3) special – proceedings materially based on the norms of administrative (Article 51 of the Criminal Procedure Code of the Russian Federation), civil (a civil suit in a criminal trial), constitutional (Part 2 of Article 29, Article 125 Article 51 of the Criminal Procedure Code of the Russian Federation) and other material branches of law (compensation for harm as rehabilitation).

Having classified the proceedings, the criterion of complexity of the procedural form should be applied. Basic proceedings have the following types: regular proceedings with pre-trial activity in the form of preliminary investigation and the court of first instance hearing and solving the case in a regular way; simplified proceedings; and proceedings with more complex procedural forms.

Pre-trial proceedings should imply protocol pre-trial proceedings; police inquiry (faster and simpler that the preliminary investigation); preliminary investigation by officers of one investigation agency.

Differentiation also means differentiation of the bench that hears criminal cases at first instance. In this respect, I believe, a professional judge alone should only consider cases of minor offence providing the consent of both the defendant and the victim.

Cases of heavy and especially grave crimes must be considered collegially, by a professional judge and two lay judges (people's assessors).

It is not proposed to eliminate the jury: with lay judges it will occur naturally, as it already happened in Russia at the end of the 19th – beginning of the 20th centuries.

CRIMINAL AND PENAL LAW

Mikheenkov Yegor G. Tomsk Institute of Professional Development of Employees of Federal Penitentiary Service (Tomsk, Russia). FEATURES OF PENAL SYSTEM REFORM IN TOMSK PROVINCE IN LATE 19 – EARLY 20 CENTURIES.

Keywords: penal system; prisoners; penitentiary policy of the Russian Empire; Tomsk province.

The challenges the penal system of Russia faces today are similar to the problems of the earlier periods of its history. Therefore, the study of experience of the penitentiary system reform in the country as a whole and its separate regions is significant both for legislation and law enforcement.

This study allows us to conclude that the development of the penal system of Tomsk province before the revolution took place in the context of the transformation of the Chief Prison Administration. However, over the long period of the penitentiary system reform the government changed several times .

This limited the continuity of policies, and the lack of necessary funds significantly braked the implementation of the programs. It is hardly necessary to agree with the opinion of some researchers estimating the period of 1879-1917 in the reform of the penal system as a failure (I.V. Uporov). At least, it does not apply to the penal system of Tomsk province.

First, the establishment on its territory of new penitentiary facilities led to improved conditions for prisoners serving sentences, as well as to less numerous "prison population". Second, changes in types of prisons resulted in the differentiation of the conditions of serving sentences, which was fixed in the main legal acts of the period under consideration. Third, the positive results of the implementation of prison reforms in the province were a gradual change of the prison performing purely punitive functions to having a comprehensive educational and labor influence on the prisoner, combined with religious education and training. Fourth, the establishment of a new type of correctional institutions in Tomsk province – a colony for minors – was the merit of both provicial NGOs and the penitentiary system administration, which gave prerequisites for the spiritual and moral improvement of juvenile prisoners.

Finally, public involvement in the work of prisons was in many ways ahead of the processes of humanization of serving sentences in the European part of the country.

Olkhovik Nicolay V. Tomsk State University (Tomsk, Russia). ORGANIZATION OF PENAL INSPECTORATE ACTIVITIES.

Keywords: criminal law enforcement; alternatives to imprisonment; sentences without isolation from society; non-penitentiary regime; resocialization of convicts; socialization.

Some scientists and practitioners connect reforms of penal inspectorates with the creation of the probation service in Russia, which would serve both pre-trial (giving the court necessary information about the defendant and assisting the court in making the optimal decision on the case) and post-trial functions (execution of sentences and other measures that do not involve restraint, control over prisoners, support and assistance to convicts serving sentences related and not related to deprivation of liberty, as well as to their families, support and assistance to victims of crimes). However, there is no unanimous opinion about the legal status of the service at present. Some researchers propose to create this service on the basis of the already existing penal inspectorates of the Federal Penitentiary Service, others consider it expedient to establish the Federal Probation Service in the Ministry of Justice of the Russian Federation. The author comes to a conclusion that the core of the reform of penitentiary inspectorates at present must be not only organizational, but also the functional aspect of their activity. The solution to this problem may be implemented in phases and accompanied by appropriate organizational changes in the structure of penal inspectorates. First of all, there is a need to increase the number of full-time penal inspectorate staff. The author proposes a method of calculating the regular number of inspectors and senior inspectors of penal inspectorates, as well as changes in the regulatory legal acts concerning the interaction with the internal affairs bodies of the Federal Migration Service, and the public.

Utkin Vladimir A. Tomsk State University (Tomsk, Russia). TRENDS OF ALTERNATIVE SANCTION APPLICATION IN RUSSIA.

Keywords: concept of correctional system development; penitentiary system; places for isolating from society; system of criminal penalties; alternative sanctions; alternatives to isolating from society.

In modern Russian system of punishment provided by the criminal law the most essential drawbacks are the following: insufficient development and account of social-criminological bases of the penal system in the whole, disregard of the typical features of separate categories in it; "excess" of some criminal sentences (for example, for independent types of imprisonment, two types of penalties limiting the labor rights of citizens, death penalty fixed by law and dormant for over a decade); flouting of a series of fundamental international acts (introduction of forced labor into the Criminal Code); discrepancy between the legal and real repressivity (severity) of some kinds of punishment (fine, especially at a new large rate, compulsory community service); unjustified competition between penalties and other similar measures of criminal-legal nature (restraint in the 2010 edition, sustained sentence); insufficiently distinct or incomplete definition of content and grounds for imposing some penalties (restraint, disqualification to hold certain positions or to practice certain professions); lack of the required steps in the system of criminal penalties,

including an intermediate punishment between freedom and constraint; discrepancy between the ideal (fixed by law) and real (applied in practice) logic of sentencing and use of other criminal-legal sanctions; violation of crucial criminal law principles when defining the content and order of sentence exercising (restraint in the 2010 edition, disqualification to hold certain positions or to practice certain professions, fine imposed on a minor); insufficient grounds, controversy and inconsistency of many new laws of the recent years.

The drawbacks of the system of punishment fixed by law and its use escalate due to the imperfection of the organizational legal mechanism of their implementation. It finds expression in discrepancy between the law (the Criminal Correctional Code of the Russian Federation) and subordinate legislation of the Ministry of Justice that regulate the execution of most of the alternative measures; in excessive subordinate legislation (the Ministry of Justice instructions repeat the provisions of the Criminal Correctional Code, several instructions on similar objects of legal control); in the lack of required unification (in the law and subordinate legislation); in the falling of the Criminal Correctional Code behind the sector-wide legislation (for example, the 2003 Federal Law on local government that changed the structure of governmental bodies); in neglecting in laws and subordinate legislation of the change of the organizational structure in the correctional system (transformation of correctional inspectorates into branches); in the typically bureaucratic constant urge to non-stop reformation, which results in insecurity of correctional inspectorates' employees, instability of the staff, loss of important reference points.

The need is vital to move from spontaneous outer improvement of the system of punishment to its deep modernization in the Criminal Code with the account of current political, social and economic conditions, changing criminological environment on the basis of the principle of required sufficiency. The first aspect means the system of punishment should have no gaps or discrepancy preventing the full-scale imposition of criminal sanctions. That is why the number of penalties should not exceed the need of criminal policy and features of certain categories of guilty persons. The second aspect means there should be no sanctions repeating one another, thus devaluing and preventing their full-scale imposition.

CRIMINALISTICS

Knyazkov Aleksey S. Tomsk State University (Tomsk, Russia). TOPICAL ISSUES OF IDENTIFICATION PARADE.

Keywords: line-up; essence of identification parade; forensic identification by mental image; forensic purpose and tasks of identification parade; identification "by the overall image"; tactical and forensic combination; tactical and forensic operation.

It must be noted that the existing definitions of identification parade reflect mostly the outer actions of the investigator and the purpose, while at the same time, the ability of identification by a mental image that defines the essence of the investigative action is not mentioned. There is a need to clarify the concept of identification, which is the provision by the investigator of the identifying person with an object presumably seen in the circumstances relevant to the criminal case, and the identifying person indicates the presence or absence of the object of interest among the given ones.

Forensic task of identification parade is to analyze the numerous causal and other relations between the elements of criminological characteristics of a particular type (group) of crimes. This content of the forensic purpose of identification is possible for the perception of an object in a situation related to the disclosure and investigation of a crime always occurs in the particular circumstances of place and action. Their finding, in view of the relationship of elements of forensic characteristics of the crime, allows to get relevant information on a larger or smaller number of these elements and coordinate it with the information obtained in the course of other investigation actions.

In criminal cases when the victims of violence are minors in order to protect them from intense emotions associated with reperception of the accused, it is expedient to identify them by a photograph. Given the particular importance of ethical positions that have found legal reflection, we offer to fix in Part 5 of Article 193 of the Criminal Procedure Code of the Russian Federation a rule stating that when the identification by the minor victim and witness may cause strong emotional stress, it can be done by a photograph and, if possible, by bringing in the accused person.

It seems necessary at the preliminary examination of the identifying person to make a composition portrait; coincidence of its features with features of the person identified "by the overall image" must become evidence.

Chadnova Irina V. Tomsk State University (Tomsk, Russia). TACTICAL PLAN OF ON-SITE VERIFICATION OF TESTIMONY.

Keywords: criminal procedure; criminology; investigation; tactics; on-site verification of testimony.

It is appropriate to allocate a number of common tactics to optimize the proceeding process of the investigation in the complex of tactics used during the on-site verification of testimony.

Without repeating the mechanism for carrying out and fixing the investigative action already stated in the literature, I would like to highlight some of the most important elements of the on-site verification of testimony, the use of which is necessary and possible in the course of its proceeding and recording of its progress and results:

Tactics to establish psychological contact and obtain the voluntary consent of the person to participate in the on-site verification of testimony. The procedural aspect of this consent is in the need to fix the rule in Article 194 of the Criminal Procedure Code of the Russian Federation.

Tactics of the order of movement of all participants of the on-site verification of testimony in the course of its proceeding.

Tactics of a free story, which now has the status of a procedural rule (Part 4 of Article 194 of the RF Criminal Procedure Code) and starts the on-site vrification of testimony.

The rule of non-interference of the investigator in the giving of testimony by the person verified with the ability to ask questions only after the person ends the story about what happened. Part 2 of Article 194 of the RF Criminal Procedure Code fixes inadmissibility of any foreign intervention and leading questions during the on-site verification of testimony.

Tactical and psychological techniques to determine the psychological type of the person whose testimony is verified to provide an appropriate influence on the person for better accuracy and reliability of the information they provide.

Tactics to enhance the memory of the person whose testimony is verified. It is one of the most effective means of correction of distortions that appear when testifying. The most efficient in this case is the use of associations the person verified has in connection with the place of testimony verification.

Using the knowledge of experts and additional means of fixation of the process and results of the on-site verification of testimony. The choice of the expert depends in each case on the type of crime and the criminal event space features that define the kind of expertise that can be claimed in conducting and recording the progress and results of the on-site verification of testimony, as well as the type of technical or scientific and technological means that are planned to be used during the investigative procedure.

FORENSIC SCIENCE

Knyazkov Aleksey S. Tomsk State University (Tomsk, Russia). TACTICAL PRINCIPLES OF INTERACTION OF THE INVESTIGATOR AND THE EXPERT IN FORENSIC EXAMINATION PREPARATION AND EXECUTION.

Keywords: forensic examination; expertise; legal examination; object of examination; forensic purpose of commissioning and executing expert evidence; interaction of investigator and expert.

The interaction of the investigator and the expert in the use and production of expert examination is in many respects similar to the interaction of the investigator and the body of inquiry during the preliminary investigation, which is carried out on the basis of the principles of the rule of law, optimal use of the capabilities of each of the entities in the process of interaction, and a clear distribution of powers and responsibilities of each of the interacting bodies and individuals.

Each of these principles is somehow reflected in the notion of expertise, which the person conducting the examination operates. A look at expertise as knowledge outside legal provisions and well-known generalizations arising from everyday experience, has a "framework nature" and does not reflect the extent of controversy associated with this category, in particular, on the issue of the possible use of legal knowledge by the expert when making conclusions. We should distinguish the ban to answer questions of a legal nature formulated by the investigator and the use by the expert of provisions of legal acts containing technical and legal standards. The correct opinion is that the use by the expert of these rules is aimed at establishing the technical, not legal, part of the phenomenon under investigation.

In this regard, it is essential to have requirements for the formulation of questions by the investigator and to use the expert's assistance. In particular, questions should be presented in a simple and categorical form that supposes getting a clear and precise answer; technical terms used in the formulation of questions should reflect their real content; questions should be asked in the optimal order: from the general to the particular; the number of questions addressed to the expert should reflect the totality of circumstances associated with the shared and private investigative versions;questions should be correct, aimed at clarifying the circumstances forming the fact in question.

Considering the interaction of the investigator with the officials of the expert division, as well as with individuals who have special knowledge, but do not have the position of experts, it should be said that this interaction is based on the laws and subordinate legislation. It is a coordinated activity of various independent (in terms of organization) participants of criminal proceedings to solve common tasks, as well as specific tasks of each of them, which is carried out in the form fixed by the law of criminal procedure.

PROSECUTOR SUPERVISION

Voronin Oleg V. Tomsk State University (Tomsk, Russia). ON SIGNIFICANCE OF COORDINATIVE, PREVENTIVE AND ADMINISTRATIVE-JURISDICTIONAL ACTIVITY OF THE PROSECUTOR.

Keywords: prosecution service; functions and directions of prosecution service activities; prosecutor supervision; administrative prosecution; coordination of anti-crime activities of law-enforcement agencies.

The modern structure and content of the prosecutor's activity are a system of functions and directions of the prosecution service activities. Functions are the basic directions of performing the duties the prosecution service has. It is mostly a theoretical construct reflecting the large number of prosecutor's activities that expresses the essence of the prosecution service determined by the national and historical traditions and the current political priorities in public relations regulation.

In our opinion, contemporary domestic prosecution service performs four functions: prosecutor supervision; criminal action; participation in case hearings; and public prosecution support.

The first two functions are independent, the first is basic, the second – secondary. The other two – participation in case hearings and public prosecution support – must be considered as derivative functions of the domestic prosecutor's office determined by the prosecutor supervision or criminal action.

The other directions of activity of the domestic prosecution service fixed in Article 1 of the RF Law "On the Prosecution Service of the Russian Federation" can hardly be recognized as functions due to the following reasons.

They do not reflect the essence of modern prosecution agencies, are insignificant in the scope of prosecutor's activities, and other public bodies can (or cannot) be assigned to perform some of these directions. Among the directions that are not functions are prosecution service activities of coordination, prevention and administration.

Coordination of anti-crime actions of other law-enforcement agencies, prosecutor's participation in administrative-jurisdictional activity, preventive and law-making activities are not functions of the domestic prosecution service for they do not fully reflect the social purpose of prosecution agencies and are insignificant in the scope of prosecution service activities. These duties of the prosecution service are caused by the supervisory function it has. The indicated types of activity are either separate directions of activity that derive from the supervisory function (coordination, participation in administrative proceedings, prevention), or separate (specialized) forms of the supervisory activity of the prosecution service (law-making).