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CONTENTS

The Modern view on jurisprudence

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Tishchenko N.V.

GENDER EXAMINATION OF THE CRIMINAL LEGISLATION OF RUSSIAN FEDERATION

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Introduction

In 1998 Penal Code, Code of Penal Procedure and Criminal-executive Codes of the Russian Federation have been brought into accord with positions of the International and European Conventions under human rights. Articles of codes were carefully checked by experts on presence of legal guarantees and a gender neutrality for accused and prisoners. However the criminal law continues to cause censures from gender theories and, the most important thing, it didn't promote decrease in quantity of the women sentenced to imprisonment, and, on the contrary, is accompanied by growth of recidivism among women. In this part of work we will try to reveal mechanisms of gender discrimination and segregation in rhetoric of criminal law. Research is based on the discourse analysis of the domestic legislation in the field of criminal law, the supervision spent in a number of correctional facilities, and interview to chiefs of the department on an execution of the punishment.

We will try to discover typical strategies of forming the gender identity in subcultures of penitentiary institutions using the material of survey research which was made in male and female colonies. The theoretical basis for realization of the main aim will be the concept of «hegemonic masculinity» (introduced by R.Connell) which consists of certain ideal strategy of behavior in culture that determines the interrelation between sexes and recurrence of present gender procedure. R.Connell thinks that superiority and hegemony of masculinity are supported by historical coincidence and stratification of two concepts such as: «authority» and manhood [3, 73]. At first sight prison community with its strict hierarchy of subordination and domination, its great number of subcategories that are divided by very different

features from ethnic characteristic up to sexual orientation, ideally correspond with conception of hegemonic masculinity. But from the opinion of R.Connell the most key factors that support the institutional hidden motive of hegemonic masculinity are the homosocial communities that are distinguished by internal solidarity, unity and confidence based on sexual identity. The distinguishing feature of prison community is a high level of distrust toward the «neighbor in prison camera», administration and society as a whole.

Substantive provisions of gender criticism of the criminal legislation

The operating Criminal-Executive Code of the Russian Federation is installed on July, 1st, 1998. From hundred ninety articles Wick the Russian Federation in 21st conditions of serving of punishment, a delay of punishment make a reservation and is conditional-early release for women. Entirely to position of the woman in correctional facilities it is devoted three articles – № 100, 177, 178. In 17 articles it is a question of «pregnant women» or «the women having juvenile children» [14]. The Penal code of the Russian Federation in 9 articles confirms special rules of punishment for women, but only for pregnant and having children under six years. Besides, in three articles of Penal code of the Russian Federation pregnancy of the woman is treated as aggravating circumstance, in a case when the woman is object of violence [13].

In the conditions of the compulsory conclusion cast and punishment measures occurs according to a following principle: «Biological» features of the woman simultaneously define characteristic features of" female crimes »and a particular treatment of punishment for women. According to ГУИД the Ministry of Internal Affairs of the Russian Federation, in 1994 was in imprisonment places of 23066 women that made 3,9 % from total number of the condemned. By 2000 the quantity of the condemned women has grown in 2,5 times that makes about 60 thousand (5 % from all condemned): 45 % of women-criminals are condemned for fulfillment of profit-motivated crimes; 20 % – for robbery and a robbery; 15 % – under article 228 connected with drugs; 16 % – for murder, including for excess of measures of necessary protection; 4 % – for drawing of heavy physical injuries. With 2000 to

2006 the quantity of the condemned women has grown on 38 % [12]. According to legal experts, the Criminal code of the Russian Federation for 35 % of crimes which, on the statistican make women, provides punishment in the form of imprisonment from 8 till 15 years that excludes reception of a delay of punishment or enough fast is conditional-early release even in the presence of juvenile children. But 65 % of the crimes made by women, don't demand according to Penal Code long-term imprisonment. Small thefts and swindle, characteristic for female criminality, carry the overwhelming majority of lawyers and jurists to a category of crimes which shouldn't be punished today by full imprisonment, and can be punished through system of partial imprisonment, the penalty, corrective works. However the domestic judicial reality shows an opposite tendency: 91 % of the women condemned by term from 1 till 5 years, completely leave the term of punishment [12].

One of important points of criticism of criminal law and criminal practice from gender theories is strategy of criminalization of women from the law: it is considered that women and minor girls become more often objects of criminal interest, than the man [7, 49-51]. If to consider imprisonment practice in the majority of the countries (excepting the states where Islam is declared by the state religion) on one woman it is necessary from 6 to 15 condemned men [10, 256-257]. However the foreign right very much willingly and flexibly uses ways of punishment alternative to imprisonment, and in this case women, really, are exposed to prosecution from the law is more often. It is connected by that many Penal Codes the foreign states mean for women-prostitutes, disseminators of drugs, small thieves punishment in a kind of the probation (as in England) or a compulsory premise in educational houses (as in Japan) whereas for the men engaged in prostitution or extending narcotics, any similar measures it is not provided [5, 118-124]. In Russia the Criminal code doesn't use similar kinds of punishments. Here it is necessary to note presence in many countries of a divergence between the legislation and real practice. In criminal codes the sex of subjects of various crimes doesn't make a reservation, but in practice these crimes make, as a rule, women, and the legislation involuntarily appears discrimination. Certainly, the vivid example of similar gender discrimination is the

situation in Tajikistan. According to Penal Code of Tajikistan transportation of narcotics is punished till 25 years of imprisonment. As shows the statistican, the overwhelming majority of similar crimes is made by the women using the organism as the container for drugs.

For Russia the question of violent criminalization of women is extremely actual, it shows gender powerlessness of criminal law and jet, "catching up" character of social policy in sphere of an execution of the punishment. To find out an origin of mechanisms of replacement or distortion of concept «a social sex» from sphere of the legalized discourse, we suggest applying the discourse analysis concerning legislative base of system of an execution of the punishment. Under the discourse analysis we understand narrative and semiotics interpretation of the discourse expert, including actually rhetorical, language practice and practice not language, demonstrated in steady social and cultural preferences.

Last years analysts mark in Russia considerable growth of profit-motivated crimes among women. The quantity of illegal actions in the economic sphere, made by women, for last five years, has grown in 1,7 times, and number of similar crimes among men – in 1,2 [9, 150-156]. This fact in many respects grows out of that in the conditions of a rigid competition of developing economy female work admits even less productive and less paid, than a stability and prosperity situation. In reforming and radical transformation of economic and social statuses of the woman first of all are forced out from a labor market, them dismiss is more often, send in indefinite leaves (since the employer means that each woman is connected by certain relations with the man who is capable to contain its and all family).

Representatives of the Saratov sociological school had been conducted research of social problems and social work on an ethnographic material of social services of one of large Russian industrial cities. Concerning female employment by authors the conclusion has been drawn that for today in Russia it is a question not only «of concentration of women in this or that sector of economy, but also about their ghettoization» since the female population concentrates in low-paid sectors of economy [17, 78-83].

It is necessary to notice that growth of economic crimes among women occurs in areas, besides, low-profit and low-paid: a deceit of consumers, small swindle. It doesn't tell about higher "morally - moral" qualities of women, about them adherence to principles and honesty; it testifies that the profitable part of economy, manufacture and financial structures is still closed from women. The statistical data confirms this conclusion: to 90 % of the women who have been not occupied in the industry, work in trade, bank system, social sphere and on telecommunications agencies [11, 140].

In the same way, as the woman isn't capable to be engaged in socially significant work, it can't commit such crimes which really would threaten existence of this or that society – for the legislator this assumption is obvious to what articles Wick the Russian Federation testify. In section 4, chapter 11, article 74 at transfer of kinds of correctional facilities and types corresponding to them condemned the law accurately defines a limit of danger and threat of the crimes made by men and women, and in each correctional facility the danger proceeding from men-criminals appears 10 times more. This is the text of article 74, confirming this conclusion:

“5. In corrective colonies of a high security the men for the first time condemned to imprisonment for fulfillment especially of grave crimes serve time; at relapse of crimes and dangerous relapse of crimes if condemned earlier left imprisonment, and also the condemned women at especially dangerous relapse of crimes.

6. In corrective colonies of a particular treatment the condemned men serve time at especially dangerous relapse of the crimes, condemned to lifelong imprisonment, and also condemned with which the death penalty as pardon is replaced by imprisonment with certain term or lifelong imprisonment” [14].

Certainly, the order of punishment legalized by this article, it is possible to treat, how "humane" in relation to women-criminals whom the law tries to "save" from extremely strict punishment. However all is only ideologically defensible visibility. To women not a place in particular treatment colonies not because the legislator cares of a mental and physical condition of the woman placed in severe conditions of the maintenance that is why that the legislator again and again confirms a cultural order

at which discrimination and a segregation of women is a part of effectively functioning system of relations.

To support this system of relations codes of the Russian Federation are called all without an exception. So, the Labour Code operating since 2000, through system of restriction of access of women to the trades connected with heavy physical work, and the inefficient, subsidized politician concerning motherhood, intentionally limits a choice and freedom of the woman, establishes barriers on its way to consumption of the social blessings. Socially safe society shouldn't build the policy through system of gender interdictions and admissions. Resolving or forbidding the woman to work in conditions with risk for health and life, to serve in army, to be in particular treatment colonies and so forth, the state cares, first of all, of own, corporate interests, and ignores requirements and expectations of the concrete woman.

Inexpediency of the rectilinear social policy traditional for domestic state system, is especially obvious in imprisonment places. In practice legislative initiatives concerning women, pregnant and having juvenile children, lead to a discrimination intensification to a sexual sign in correctional facilities. The concept «easier mode of the maintenance» in legislative rhetoric doesn't mean respect for the parent status of the woman, a recognition of psychophysical features and requirements of the woman, it stipulates the list of material and financial expenses which should incur correctional facilities, in whose walls "mothers" contain. In reply to the requirement of material inputs the penitentiary system answers with mental and physical violence over women: compulsory gynecologic "searches", absence of hygienic means in colonies, refusal in possibility to be near to the baby and so forth.

The gender policy in the prisons

The modern Russian legislation is the sample of an unreasoned gender policy. At first sight, it aspires to creation of an optimum social climate for existence of the woman. Wick the Russian Federation provides only three-monthly conclusion of women in a premise of chamber type for malicious infringement of an order (men for similar infringement the six-monthly conclusion expects), and women pregnant and having juvenile children are released from application of such disciplinary measures

[14]. This fact doesn't say that the law hasn't left possibility of distribution of latent discrimination. During interview to employees of bodies of an execution of the punishment presence was found out from the majority of them serious negative attitude to female correctional facilities, instead of to the man's. The behavior of women in categorical terms is treated as emotionally not constrained, less controllable, women-prisoners aren't capable to make concessions each other, to a management of colonies, with them relations on an equal footing, contracts and agreements (it is meant that all it is applied in case of supervision of men) aren't possible. In the course of research in one of prisons, we have found out that as encouragement (and as a trust sign) free moving on the administrative case of prison was authorized to the men-prisoners, who were carrying out various technical commissions, but the similar measure wasn't applied to the condemned women. All it testifies that actually women enjoy smaller trust.

Acts don't consider all aspects of a problem and is declarative give the list of privileges to women-criminals pregnant and having babies. The legislation contrary to steady mistrust and suspicion from public (man's) opinion "entrusts" to the woman cultivation of the most valuable to the state – «the future generation». On this soil also there are modern experts of discrimination of the woman in the correctional facilities, more refined and more dangerous, first of all for the society in which they are applied.

The woman and its body were and remain for the power objects of gamble. The power, on the one hand, recognizes the high price of a female body, thanking its reproductive functions, on the other hand, the power subjects a body of the woman to unprecedented dangers, and in this double space of protection and violence mechanisms of control and influence on the woman are developed. The main problem consists not that certain institutes and supervision and punishment practice are dangerous to the woman, and that imperious mechanisms, is artificial generating this danger, leave to the woman unique possibility to avoid or weaken it is motherhood.

Declaring "motherhood" the most natural, natural condition of the woman, the power frankly dissembles. Reproductive ability of the woman was repeatedly used

for the decision of exclusively social problems. For example, increase of the status (white) woman in the North America in 90th of a XVIII century after war for Independence is connected, first of all, with new treatment of a role of mother in a society. The ideology of Education has demanded civil responsibility of mother-republican and consequently the program of female formation and the new concept of marriage, as contract between two equal partners have been widely developed. However the ideology of Education hasn't demanded from the woman of responsibility for the sake of it, it again speculated on "motherhood" and «reproductive ability of the woman-citizen». Therefore out of educational programs there were black women and aboriginals of America – they weren't citizens, and also white women of old age – they have already settled the reproductive ability (the blessing that middle age of women in America didn't exceed XVIII centuries 44th years) [16, 72].

In the conditions of imprisonment of a privilege which are received by the pregnant and feeding woman, it agree Wick the Russian Federation, carry out the same function, as «education programs of women» in America XVIII centuries. Both strategy reduce the woman to the unique role, socially significant, but, first of all, biologically justified, motherhood roles. It is necessary to notice that this strategy actively operates not only in economic sphere or in punishment system. It defines till now development natural-science, medical, and even, a political discourse. After all the interdiction of experiences on cloning in many countries is in many respects result of strategy which is capable to represent the woman only to roles of mother (and on the contrary, mother only in roles of the woman).

Gender aspects of formation of prison subcultures

From the point of view of the majority of research workers the subculture of a condemned people has a masculine character because of quantitative superiority of condemned men above condemned women and also because of forming the hegemonic institutional masculinity in criminal world. But from our point of view it is illegal to describe the subculture of penitentiary institutions using only the masculine features. Most probably the question is about forming the specific

comprehension of sexuality in conditions of compulsory deprivation of liberty. Prohibition of any method of articulation of sexual desire, prohibition of even small demonstration of sexuality (right up to cruel punishment from the side of convicts because of accidental contact) resulted in the mode of «classical» prison community. But prohibition of sexuality sanctioned by the administration and prison community is not the only proof that subcultures of penitentiary system can't have a traditional masculine or feminine character.

Convicts very rarely refer themselves to some small groups inside a colony or prison. Each of them insists on internal independency and tends to physical loneliness, but it is hard to achieve in traditional Russian «barrack» system of keeping criminals in prison. Widely spread communities of convicts in prison, colony environment such as: families, groupings, friendly associations leave the individual a choice to make his own decisions. Interference of a small group in private life of its members is disapproved from the point of view of subcultures of penitentiary institutions. «In any way we (members of a «family») are in ourselves. I don't bother anyone without some reason and no one disturbs me» (Alexander, 38 years, two prison terms. Interview from April, 2nd 2003). Aspiration for individualization accompanied by rejection of trusting and friendly mutual relations is much more peculiar to convicts than the aspiration for socialization and for building the multilayer social structure. That is why it is illegal to declare about the presence of a stable reproduction, translation and escalation of hegemonic masculinity by prison community.

The analysis of confidence is a very important part of analyzing the process of contextualization of subject's activity. The concept of confidence can form not only the strategies of masculine practices but also demonstrates how the characteristics of active subject correlate with the parameters of environment in which he operates. The absence or a lack of confidence weakens the solidarity and its unarticulation puts the limitation on transformation of individual subject into collective. Such situation is very appropriate for administration, because it's one of the main aims is the attempt to decrease the solidarity in prison and to form the collective subject which will be

able to resist the discipline and control practices. In male corrections with a very low level of confidence administration managed to exclude the confidence fully from the sociocultural climate.

Empirical study

In our empirical investigation we made a survey research among the convicts in female colony (Samara region) and male colony (Saratov region). The total amount of extracts is 404 survey researches. They include 203 women (101 convicts who spend in colony less than 3 months, 102 convicts who spend in colony more than a half of the period) and 201 men (101 convicts who spend in colony less than 3 months, 100 convicts who spend in colony more than a half of the period). So as to analyze the opinions of respondents the original variant of questionnaire form was made. Such questionnaire form was organized using the principle «conditions – mechanisms - consequences».

Analyzing the information of survey research we can see that the research work made in male colony demonstrates extremely low level of confidence between neighbors in camera and also between convicts and administration. Only 7% of men-respondents trust the administration and 1% of men-respondents trust the neighbor in camera. The abstract norm of confidence is interpreted by man-convicts as a basis of each co-existence. The absence of such norm is perceived as a main, base defect of being in colony. The distrust is spread on the members of the family although the fraternized family is represented in the interviews of the convicts as a base of everyday life in colony. As the respondents say the regime of keeping depends not only of regime rules but of the status of the family you belong to: «I was lucky. I got into a good family. They were waiting for me. The guard didn't disturb me, not like other men, because of a good family» (Alexander, 38 years, two prison terms. Interview from April, 2nd 2003). Our conclusions about deficiency of confidence in male penitentiary institutions are confirmed by the researches of A.Olejnik (6, 153).

A little bit different results were demonstrated during a questioning in female penitentiary institution concerning the confidence between the convicts. In female colony the coefficient of confidence inside a small prison community is 34%.

Between women a smaller quantity of respondents meets with difficulties while giving a well-defined answer on the questions (7%, in male colony – 10%). In female colony 13% of respondents don't trust anybody, in male colony – 39%. For men and women it is typical to trust the members of independent society more than it's own direct and nearest surroundings (in female colony – 44%, in male – 41%).

Low level of confidence in male penitentiary institutions and rare mass disorders which lead to disorganization of functioning of the penitentiary institution prove that in Russian prison male sphere there is no organized collective subject. The absence of collective subject does not allow stigmatizing the subculture of penitentiaries as only masculine because within its boarders only individual strategies of survival and adaptation could be constructed. Such strategies do not have institutional strengthening and recurrence. The subculture of penitentiaries expects an extraordinary organization from the individual and as convicts say «the ability to stand for yourself». Such imperative is claimed in conditions of imprisonment and is translated by the rest of society as a symbol of hypertrophied masculine that supposedly prevail in prison sphere. R.Connell thinks that such forms of behavior as «the ability to stand for yourself» and «responsibility for yourself and your neighboring» are typical for masculine habitus (3, 79). But as for the subculture of penitentiaries this imperative is gender neutral and it is impossible to relate it with some definite sex social role. Following this imperative is the only possible strategy of survival for men and women in conditions of imprisonment.

Higher level of confidence between condemned women allows making a decision about the presence of a stable tendency towards forming the collective subject in female penitentiary institutions. Besides, prison administrations often note increased explosion-proof of a social cultural climate in female colonies. Workers of the department of execution of punishment explain that hyper conflicts in female colonies take place because of «unstable, spontaneous, hysterical character of women in whole» (Alexander, 45 years, the employee of penitentiary system. Interview №3 from July, 25th 2002). From the point of view of colony staff condemned women do not have an aspiration for cooperation and that is why any women association is not

effective and short-time. Investigation of small social groups which are formed in colonies by convicts so as to make «individual», private area in conditions of total and discriminatory institutional system shows that «families», named on the agro language as «fraternized» in female colonies, can be characterized as socially unstable. They decay immediately after the main aim is achieved such as: protection of someone's private interests, conflict with administration, accumulation of capital. Families decay also rather often in male colonies. All this happen because of a high level of distrust between the convicts (66%) and the absence or a lack of materially domestic base for building such communities. Comparing the quantity of stable «families» in male and female colonies we find out that in female colony among a group of 130 persons there are 6 stable small social groups, in male colony among a group of 130 persons there are 20 stable small social groups, i.e. 3.3 times larger.

Independently of the stable existence of «families» in male colonies their functioning is less intensive and significant than in female penitentiary institutions. For condemned men «family» - is an opportunity to distinguish them from the common social area; it is a definite reference point for differentiation of social surroundings on «one of us» and «stranger». There is no different functional duty of a family in male colony. Here we can see a tendency towards social fragmentation of closed and isolated society of convicts. Each fragment is trying to move away from the remaining society as much as possible and to get maximum freedom while making a decision. In female penitentiary colonies formation of a family have a pragmatic and functional character. The exchange of material and human resources is established between families. The construction of a family has a matrix character and each segment after completing the problem put by pass on a new level of social area. In male penitentiary institutions fragmentation and making small social groups, «families» is the only opportunity for social actors to realize the social operation in such social structure, i.e. prison, where the demonstration of free will by the convicts is strictly limited by prison regime. Accomplishment of such social action, creation of a new social structure is not appreciated by actors-convicts from the point of view of effectiveness. A.Olejnik in his research of prison subculture discusses an endless

fragmentation of life in colonies. From his opinion such fragmentation appears because of convict's aspiration to achieve simple comfort in «everyday life of a small society» (6, 184). But in his analysis of fragmentation A.Olejnik does not use gender strategies and does not mention serious differences between the origin of fragmentation processes of small male and female societies in penitentiary institutions.

In female penitentiary institutions fragmentation has a different character. First of all, fragmentation is not the only available social action for condemned women. Secondly, forming of small social groups occurs using the branched system of factors with a subjective character such as: personal sympathy, common interests and social congruence. In male colonies unification usually happens because of «independent» from the individual factors such as: friendly association of people from same area, membership of this or that grouping «at large», caste attribute in colony, nationality. In the third place social fragmentation in female colonies is always orientated on effectiveness and successful achievement of formulated aims.

Instability of small female communities mentioned by the colony staff is not the result of the absence of some self-organization in female groups; it is the result of a high level of orientation on success. The desire to achieve the formulated aims (of different kids) is the forming value appropriated to female subculture in penitentiary institutions. Such conclusion of our research is confirmed by the answers of condemned men and condemned women on the question: «*What features of your character are the most important in colony*». 48% of women named such features as: purposefulness, prudence, activity, the ability to contact; only 12% of women marked independency and aspiration for loneliness. On the same question 54% of men named such features as: the ability to stand for oneself, self-sufficiency, independence, ability to withdraw into oneself, ability not to pay attention on the nearby surrounding. Besides, while questioning condemned men it was cleared up that communicability is interpreted as an indicator of a high probability of denunciation from a person with such feature.

The ability of condemned women for social mobility, for forming and destructing of small social groups so as to achieve some personal aims or get some privileges demonstrate that the policy of segregation and exclusion inside the subcultures of penitentiary institutions was not successfully realized among women. But the administration of the colonies refuses to admit that women have a high level of social mobility and are able for productive social actions.

Here are the explanations of such situation:

1) Administration belongs to the first level of structure (official declaration of internal, non operating rules and norms of the second level of structure disorganizes the control of the colony);

2) Popularity of gender stereotypes refuses a social activity to women;

3) Principle of desexualization affects on the whole modern penitentiary system.

Family in prison and family in freedom

Our analysis of the level of confidence in subcultures of penitentiary institutions will be imperfect without discussing the attitude of condemned men and women towards the family institute as a whole. Statistics say that in colonies where the research work took place only quarter of condemned men and women were married before they committed a crime, three quarters of convicts were divorced or simply lived together. So as to find out how belonging to the «family» in colony influence on convict's level of socialization we asked respondents such a question: «Do you plan to get married and to build a family after discharge». The answers on this question convince that conceptions about fraternized-families made by individuals in external aggressive environment and families formed in an open natural society are diametrically opposite. Most of men that use to maintain «family» way of life in colony, and women that demonstrate high social mobility in colony confirm there preparedness to get married or to keep on previous connections (74% and 75% correspondingly).

The results of questioning about expectations and intentions of convicts differ from statistical data which shows that only 15% of marriages remain after the

conviction and this percent reduces up to 9% if a woman was condemned (8). One of the most important facts in our research is the conclusion that condemned women are less inclined to extreme individual segregation that is peculiar to condemned men. Secluded way of life, «voluntary» segregation in conditions of deprivation of liberty - all this is not a strategy of adaptation of individual but a norm of behavior which is greeted and supported by order and regime in penitentiary institutions. The attempts of condemned women on the naive and intuitive level to resist such norm are the *characteristic features* of female penitentiary institutions. Suspicious and captious attitude of colony staff towards condemned women can't be explained with the help of such cliché which administration uses speaking about condemned women: «Do you really think that beating or abuse can frighten such women? …these women in the majority of cases from childhood live in the conditions of abuse and scuffle. For them it is normal life, they got accustomed and often do not understand in a different way …» (Elena, 35 years, the employee of penitentiary system. Interview №2 from April, 4th 2003). Such appraisal demonstrates, first of all, not a real state of affairs but a discursively constructed reality where definite cultural forms of gender simulate the «real» and spread its power throughout approval of itself as a natural construct making an invisible for socium substitution of multilevel differences by pseudo-believable binary oppositions. Secondly, negative attitude of colony staff towards condemned women is the consequence of the fact that modern strategy of punishment does not consider the specific characters of gender practices. Feminine practices turned out to be outside the strategies of penitentiary institutions because: 1) Social structure where penitentiary system was formed refuses to refer sexuality to feminine practices and that is why woman in prison is not punished through the prohibition of sexuality; 2) System of punishment can not resist the inertia of condemned women toward forming the collective subject, and the internal segregation in female penitentiary institutions does not reach the necessary level on which each condemned woman is exposed to total control. Feminine practices have at least two strategies of escape from generality of penitentiary institution. That is why penitentiary culture is

associated by the research workers with male, masculine practices and outside such practices this culture becomes absolutely nonsensical.

It is necessary to point out that those 53% of condemned men who want to build there own families after discharge consist of convicts with real chances in nearest future to get conditional-early release. In such manner it is very important to compare the forms of women representation by condemned men before and after the moment when they were put in penitentiary institution. Analyzing the documentation of interrogations and testimonies of accused men, we can see that in their discourse, as a rule, woman (mother, wife, mistress) is a reason of their illegal action. In this case woman's behavior is characterized by such extremely negative appraisals as: craft, anger, envy, deception, criminal agreement. A man is a victim of such perfidious woman's strategy. But in the appeals for pardon woman is represented as a deposit of future law abiding behavior of a criminal men. Convicts promise to look after the aged mother (the stories about her are accompanied by such ideas as: kindness, tenderness, obedience to destiny, love of son), to return to their family and wife (the same ideas about kindness, tenderness and care), to marry (the appeal is accompanied by the letters to a woman with a proposal to marry him). We analyzed 31 appeals for pardon and the materials of convict's testimonies.

Content analysis of the evidences and the appeals for pardon allows making a decision that women representation from the point of view of condemned men has an ambivalent character. Woman is an object of sexist pretensions and performs as a guarantee of a due diligence of men's behavior at the same time. Feminine practices are not perceived by condemned men as independent, autonomous strategies and are reproduced depending on men requirements (table 1).

Tab 1. Table of content analysis

Representation of woman	Types of documents	
	Convict's evidences	Appeal for pardon
Positive	—	1. Woman as a subject/object of care 75% 2. Woman as a guarantee 63% 3. Woman as a source of personality revival (emotional and cultural revival) 51% 4. Woman as positivity (woman-mother) 94%
Negative	1. Woman is an ambivalent victim (principle: it's your fault) 68% 2. Woman is an instigator (the idea of a crime was her. I was only an executor) 82% 3. Woman is a source of a conflict 62% 4. Woman as a negation («all women are bitches») 92%	—

Positive images:

1. Woman as a subject/object of care – condemned men is pointing on a woman who needs his care (ill mother, under age sister remained without parents, sister who takes care of ill parents, wife and daughter who need material help).

2. Woman as a guarantee – wife, sister, bride are the necessary conditions for a condemned man to come back to a worthy way of life.

3. Woman as a source of personality revival – again discovered or appeared in colony (mutual relations with the help of correspondence) feelings for a woman contributes to realization of made mistakes.

Woman as positivity – in hierarchy of women roles the image of woman-mother is surely on the first place.

Negative images:

1. Woman is an ambivalent victim; motive of deviations (violence) can be explained by her own behavior – the state of alcoholic intoxication, narcotics, prostitution, principle: «it's your fault».

2. Woman is an instigator; the initiative and the plan of a crime belong to woman (mistress, rarely wife, sister and mother).

3. Woman is a source of a conflict; appearance of a woman in masculine company provokes conflict situation.

4. Woman as an absolute negation; the final mark and explanation of the occurrence.

«Labour», «power» and «sexuality» in prison

Masculine practices in conditions of deprivation of liberty became significantly strained. The limit of sexuality that strictly fitted on the discursive level (the regime rules) and on the prediscursive area (internal norms of the subcultures of penitentiaries; living according to «concepts») deprives masculine practices of their stem and domination or in terms of Connell – hegemony. «Male habitus» which from the point of view of P.Bourdieu is realized in definite practices loses its usual stigmatization (1, 171-183.). Dissipation of hegemonic masculinity is becoming stronger because of a pointed out high level of distrust towards each other in prison sphere. Strict hierarchy of social roles in prison is not supported by masculine aspiration for domination among men. The presence of such hierarchy is the result of a serious gap between structures that organize masculine practices in modern world – labour, power and sexuality; and also the result of operations of such separate, autonomous structures in prison area. Following R.Connell and J.Butler we emphasize these three constructs of forming gender practices. Each of them thought that spreading of the roles inside these three fundamental structures determines the character of gender practices in different historical periods. For R.Connell domination of *hegemonic masculinity* as a cultural sample for all practices of sex without exclusions is the incontestable fact (3, 104). For J.Butler domination of each practice ends with its understanding as a simulation of reality, as a copy which proves

its tolerance and domination by the way of common recurrence. When the movement of such recurrences in present discourse stops, domination of this or that gender practice also disappears (2, 31-33). With the help of these two theories and using the analysis of labour, power and sexual practices in prison we are going to demonstrate that in conditions of deprivation of liberty processes of forming and proceeding of any gender practice are distorted and in several cases are impossible because of aspiration of penitentiary system for exclusion of sexuality.

1. **Labour.** Labour and deprivation of liberty are crossed on two levels. On the first level, labour historically is the main feature of imprisonment which from one side locates between productive and commercialized forms of industry and from the other – between teaching and correctional strategies. On the other level, labour is corrected by the specific of any activity in prison and especially by free remuneration of labour and by the process of labour organization. Inside a prison labour of convicts has several functions. Labour benefits and becomes a source of profits for the government; insures the education and the ability of improvement with the help of employment; labour is the mechanism of control and allows organizing the daily routine and supervision of convicts.

All these good functions of labour became unrealizable in prison because of a gap between the forms of labour accepted in modern world and a prison conditions. First of all, labour did not become a prestige form of employment in prison; just as in traditional society labour is interpreted as an obligation and it is a destiny of the representatives of the lowest «caste-classes». Secondly, imprisonment distorts the meaning of labour because does not guarantee immediate and valid reward for labour. In the third place, the attitude toward work and labour motives in prison differ from attitude and motives of individuals at large. The concept «satisfaction from work» absolutely extraneous to convicts; the interest for work is often connected with such two moments as: extra earning and getting a comparative autonomy. Taking into consideration the fact that the majority of convicts have short period of imprisonment, the interest to develop the «career» in prison has a small importance for the ordinary convict. But competent professional orientation, professional

consulting, additional education, serious personnel training of labour collectives are the most important satellites of modern labour activity.

Gender practices that are formed by the process of labour activity are exposed to serious transformations because of distortions of the labour activity essence in conditions of imprisonment. Labour in prison is not an area inside which the models of gender identity are formed. The highest castes of criminal subculture which in terms of Connell pretend on the status of hegemonic masculinity do not represent themselves in terms of productivity and prestige labour activity (for the highest castes of criminal subculture labour activity is forbidden by norms of internal subculture). In prison there is no need in traditional division of labour which promotes gender differentiation of manufacture and the whole labour activity. Material well-being which determines the relations between domination and submission inside one sex also does not depend in prison on the level of participation of the individual in labour activity.

In native prisons labour activity historically is put outside the social area where different social roles are distributed. In tsarist Russia convicts worked only on penal servitude. In prisons the work of convicts was not used and they lived with the help of state subsidy and charity. In soviet period corrective-labour law became rather popular (15, 114-128). But in reality compulsory for each convict labour activity did not influence on distribution of social and gender roles in places of deprivation of liberty because such labour activity is not productive, not effective and uneconomic. Beside in native prisons still exists a strategy that destroys the aim of labour activity which is oriented on the increasing of income. We mean the term «share» - convicts by their own free will collect resources so as to spend them on the help of convict with hard financial positions (put in penalty isolators, barracks with intensified regime, rooms of cell type, hospitals and newly arrived). The collection of funds is not realized forcedly, «share is not collected by the command», distribution of the collected funds is not a prestige activity, and all funds are kept in a bedside-table. Beneficiaries are not laid under any obligations for the material help toward

community, «if a person is respectable, he will not demand something in exchange for share» (Roman, 24 years, first prison term. Interview from March, 28th 2003).

That is why we can make a conclusion that labour (manufacture) is not included in the number of such structures inside which distribution of social roles in prison takes place, criterions of domination and submission are set between biological sexes or among one sex. Masculine claims for domination in prison lose its epistemological and sociocultural connotations because of men's participation in prestige forms of activity and in distribution of benefit.

2. Power. The official discourse identically interprets the distribution of authoritative interrelations: completeness of power belongs to a law and its embodied official staff, the effect of punishment consists in alienation of convict's rights to manage the situation regarding their own essence; the most strict, total punitive systems are trying to control even physiological processes in the organism of an individual. Speaking about the question of differentiation of authoritative interrelations in conditions of deprivation of liberty a paradox of unequal integration in socium appears. Unequal integration means the submission of one group of individuals to the other inside the borders of realization of definite gender practices (4, 507-544). The majority of research workers think that present-day reality represents masculine oriented social structure in which domination of men above women is found in numerous spheres. Domination inside one gender group is distributed by virtue of authority. Thus, the system of domination in penitentiary institutions must be formed in the following way: in male colonies the power of administration is supported by absolute authority based on confidence; in female colonies the authority of official staff correlates with dominating masculinity: the majority of representatives of colony administration are men and they strictly stick to masculine strategies of behavior.

The research work held in male and female colonies showed that distribution of power in penitentiary institutions and unequal integration of participators in social actions did not correspond with the idea of how they must look like. The authority of administration is not supported by the confidence of convicts and such authority has a

formal, normative, unverifiable character. Polling of a convicts shows that men (92%) and women (96%) do not trust the colony staff even without discrimination from their side.

The answers on the question about the confidence towards male and female colony administration turned out to be almost the same. In both cases only one from seven respondents trusts the colony staff. Deficiency of confidence towards the officially marked dominating side provokes the paradox of unequal integration in prison: dominant group (colony administration) does not have any specific characteristics confirming its predominating status and has to use symbols and signs formed in criminal subculture for its own stigmatization. Even the first authors of the theory of criminal subculture paid their attention to the fact that prison staff had no special subculture. That fact the research workers explained by the aggressive character of criminal sphere and it was impossible to resist the total influence of such criminal sphere using legal and legitimate methods. Such interpretation of cooperation between administration and subcultures of penitentiary system is insufficient and superficial. Colony staff has to use norms and ideas of criminal subcultures because of simulation of their own authority which do not have any prediscursive basis.

Paradox of unequal integration in prison compromises not only the predominance of guard staff but also casts doubt on any effect of domination. No one from the representatives of «highest prison caste» - authority or «guardant» - pretends to complete and unconditional submission in conditions of prison or colony small society. Masculine hegemony is rather problematic in conditions of deprivation of liberty because no one from the practices of domination is realized in prison in full measure. Violence and discrimination of course happen in penitentiary institutions and they are not concentrated in hands of a certain dominating group. They are the result of permanent circulation of mobile prerogative of power execution in colony. In colony the real domination is multichannel and a-substantial, that is why in penitentiary institutions is formed such a situation which in terms of official language and prison slang can be characterized as – *outrage.* Outrage – is an absence or an

inaccessibility of legalized, institutional methods of solving the conflict situations, a dissipation of usual strategies of behavior toward authority, violation of social and gender role's differentiation (6, 146). Because of fictitious phenomenon of domination and submission in prison the gender network of identifications becomes distorted. In traditional, classical discourse gender is turned out to be «performative», that is why such gender is represented with the help of persistent practices of reproducing the established distinctions (2, 9). But in conditions of small isolated society gender identity loses its functionality. Condemned men and women are trying to ignore their own identification by means of gender stigmatization and prefer to use the external order of symbols instead of «perfomatively» constructed identification.

Thus, in colonies the fictitious character of authoritative interrelations destroys the network of gender identifications. Power and gender in prison are not formed, not constructed and did not pass the formation; they are concentrated in definite social community under the influence of different factors and also under the influence of such factors they are dispersed. Authoritative functions do not correlate with any concrete gender practice. Trajectories of movement of authoritative and gender strategies in conditions of deprivation of liberty are different and do not operate one through the other.

3. Sexuality. In conditions of deprivation of liberty men and women existence in usual, ordinary meaning of sociocultural reality became insufferable because of the influence of double structuring which lead to a gap between social structure (isolated society of convicts) and social action (reproduction of definite gender practices). First of all, the regime rules in places of deprivation of liberty confine the ability to use definite gender practices (the majority of research workers mark the absolute impracticality of native prisons and colonies to the needs of woman's body; specific needs of men's body are also ignored in regime documents). Secondly, strict internal rules of prison community reformulate the main theses of social existence of sex. According to the position of Bourdieu, in an open, free community social existence of sex is connected with specific authoritative gender interrelations. Such interrelations suppose one practices and exclude the others, their influence as a rule is interpreted as

a positive compulsion (for example, suggestive pride of men and women because of their belonging to definite sexual constructions) [2, 177-183]. In the isolated prison community social existence of sex is determined by authoritative interrelations which: 1) ignore the gender mechanism of power distribution in society; 2) indifferently refer to any sexual practices; 3) are the negative compulsion which in terms of law is interpreted as a violation of the law and a free community interprets it as an amoral strategy of behavior.

According to our hypothesis, the subculture of penitentiaries does not belong to some definite masculinity among the dozens in modern social structure because the quintessence of subcultures in penitentiary institutions is an aspiration of the members of private community to avoid the gender identification. The results of convict's answers on the question: *«Who from your point of view easily endures the deprivation of liberty: man or woman»* are very significant. 71% of women and 64% of men answered that it would be easier for them to serve their sentence if they belong to the different sex. So, for the majority of convicts sexual characteristic is a source of suffering and they are sure that because of specific features the different sex does not have such discomfort and problems.

As a result, interrelations inside homo-social prison community where the actors are gathered not of their free will but under compulsion are formed using the principle of ignoring and refusal of any gender identity but not with the help of cooperation with the other sex and representatives of the same sex. Using the theories of P.Bourdieu and R.Connell we can make a conclusion that in prison community the ideas of social sex undergo aberration. The term **«social sex»** means the definite structure of sociocultural interrelations which is connected with ordering and classification of authoritative mechanisms that affect on «extra-social», biological characteristics of the individual. In conditions of free society authoritative mechanisms are concentrated on cultivation and spreading of the legalized and preemptive gender practices. Quite the contrary, in the isolated society the authoritative mechanisms are directed on dissimilation of practices connected with sex construction. The classical subculture of the penitentiaries was based on

desexualization of the subject in conditions of deprivation of liberty. The evidence of such fact is the traditional division of social roles in prison: «authority», «guardant», «goat», «passive homosexual» and «man» which excludes any sex role correlation. Sexual identification, as in case with «passive homosexual», had only negative colors and meant highest possible margin and segregation of individual because he was represented in society using the system of sex social roles, but not because «he was used like a woman». Displacement, discrimination of «passive homosexuals» in prison community and sexism in «free» society structurally are absolutely different processes. The following example is an evidence of such fact. All attempts to build the analogs of brothels from the cells with passive homosexuals for the most respected convicts were unsuccessful because they were not claimed by the authorities. Penetration of the elements of gender distribution inside modern Russian prison community leads to loss of norms and rules in subcultures of penitentiary institutions. Formerly the term «outrage» in colonies characterized the actions of administration («inability of individual to affect on the situation in which he is situated and on the choice of the rules of the game») (6, 146). Nowadays the situation of outrage covered the internal structure of subculture of penitentiary institutions and such fact is developed in overestimation of gender statuses in prison. Formerly sexual connections were applied only as a form of punishment (the most cruel in extraordinary cases), nowadays intimate connections – is a demonstration of authority preferences regarding this or that individual. Sexuality destroys the internal norms of subcultures of penitentiary institutions and makes the penitentiary system not only ineffective (the social idea speaks about the danger of deprivation of liberty from the moment when prisons of modern type appeared), but also transforms its cultural-historical and social atavism. In states where the results of sexual revolutions were fully analyzed by the society deprivation of liberty as a measure of punishment is used extremely rarely. Such countries are Belgium and Scandinavian states. In legislation of Russian Federation such rule is not indicated and that is why the subcultures of penitentiary institutions continue the social corruption. These subcultures are very dangerous for the society and they cause the perplexity of prison

authorities: *«for those who are nowadays in prison our former conceptions are not a law. In prison I saw a lot of things, they are – real neds»* (Valerij, 51 years, three prison terms. Interview from April, 1st 2003).

In female penitentiary institutions a bit different order was formed, but the strategy of desexualization of the individual was held also systematically and purposefully. We think that in female colonies specific sex social roles were formed without any similarity with the social hierarchy in male penitentiary institutions. The main feature of female penitentiary institutions is the inversion of traditional gender identification, but not its rejection like in male penitentiary institutions.

Taking into consideration the fact that prohibition of sexuality is rather latent and the most popular form of punishment in modern penitentiary systems it become clear why the quantity of condemned women is rather smaller than condemned men though the female crime in the whole world is rising during the last two decades. Women in the majority of cases got off the punishment such as deprivation of liberty not with the help of state which admits that imprisonment destroys a woman, but because dominating masculine coordinates of culture *deny* the woman's right to sexuality and that is why it is impossible and foolish to punish a woman using the prohibition of sexuality. Each time when the rhetoric of official resolutions proposes the expanded list of privileges for condemned women, gives the possibilities for a criminal woman to avoid the deprivation of liberty it does mean that authority reveals a tolerance and loyalty regarding the feminine practices. The authority formed by phallo-centric, masculine principles is not trying to make a gender neutral, gender equitable sphere. Such authority confirms the ineffectiveness of such punishment for a woman as deprivation of liberty when a total line of demarcation between *woman* and *sexuality* is made by culture and society.

The first specialized female prison was opened in penitentiary institution of Indiana State, USA in 1873, 8 October. The appearance of such institution was the original result of struggle of American women for their civil, political and sexual rights. In Russia separate female colonies were made only in the Soviet period, during the years of collectivization and industrialization of the whole country.

Modern penitentiary systems meet the interests of phallo-centric culture which constructed them. Punishment of a woman by the means of fixed by the law deprivation of liberty comes into effect when the culture gives a list of social goods for a woman and feminine practices. But such list is limited for a woman in economical, sexual and political spheres. As a result, provided by the law punishment of a woman is always situated in some illegal area with secret discrimination which is used because the legal forms of punishment are ineffective regarding the criminal women. Besides, the mechanisms of penitentiary systems are not characterized by flexibility and that is why independently of the object of punishment and discipline penitentiary system uses the one and the same method of influence. Strategies of desexualization that are embodied in practice in correlation of feminine practices with reproductive function of woman's organism are proceeded to be used toward women. Criminal legislation of Russian Federation with an accent on maternal function of a woman also stimulates the desexualization of condemned woman because in modern world sexuality fundamentally differs from reproduction.

As a result of our investigation we conclude that in female penitentiary institutions specific sex social roles are formed. The construction of particular practices in female colonies was provoked by the action of mechanisms of official desexualization of condemned woman in conditions of masculine culture. The male subculture of penitentiaries was directed on minimization of the needs of men's body, restriction of desires and strict discipline of all physical practices. The female subculture originated from the necessity of intensification of physical practices that operated contrary to and injurious to the official segregation of importance of reproductive ability of a woman's organism.

Following J.Butler we suppose that «sexuality is created by the culture inside the present authoritative interrelations». Studying the normative sexuality, forming the identity inside the present type of authority, trying to understand the possibilities of destructing the legalized forms of sexuality all this can be made only inside the boarders of power matrix. But if we consider epistemological and real characteristics of power as some priorities we refuse to interpret a «man» as a «reason of

unreducible meaning of sexuality» in modern culture (2, 14). Regarding the penitentiary system such methodological admission means that not masculine, not «male» sexuality supports gender discrimination, segregation and deprivation in female penitentiary institutions. The dynamics of authoritative interrelations inside the sexuality is not identical to the simple strengthening of the positions of phallo-centric power regimes. Inside the authoritative practices definite types of identity are constructed. These types of identity are recurrently reproduced in socium on all levels. Repetition of these identities becomes the reason of denaturalization and mobilization of gender categories. That is why one of the most widespread methods of analyzing the female penitentiary institutions is the contrasting of two gender systems where one gender system deprives and discriminates the other.

Summarizing the analysis of gender practices of the subcultures of penitentiary institutions we can cast doubt on united and integral character of sex social roles in prison sphere. In prison community two strategies of behavior are formed using the latent mechanisms of control and punishment which are connected with desexualization of condemned individual. The first one is typical for male penitentiaries and aspires to maximum rejection of gender stigmatization. The second one is accepted in female penitentiary institutions and directed on intensification and exaggeration of gender practices. These two strategies change the internal principle of three fundamental structures where the specific interrelations of sexes take place. That is why the semantic contents of gender strategies, the character of their processing in different social structures depend on mutual relation of definite social action in concrete social area and did not depend on masculine and feminine models legalized in present society.

Conclusion

During the spent analysis following conclusions are drawn:

1) Criminal legislation of the Russian Federation supports the gender asymmetric cultural order which is constructed on discrimination of certain groups of the population, in this case, women;

2) Criminal legislation of the Russian Federation is made incorrectly from the point of view of the gender theory: the male is shown to abstract, and female — to corporal. It reproduces traditional cultural division on man's and female, giving out it for "course of nature" thanks to naturalization of reproductive ability of the woman;

3) Criminal legislation of the Russian Federation ignores two important concepts: « parenthood » and "household". Penal Code uses concepts of "motherhood" and "family", which don't correspond to all set of social and cultural artifacts of the present;

4) Criminal legislation of the Russian Federation can become a source of a new wave of social instability: destroying role pluralism and feigning and criminalizing concept "motherhood".

To reduce influence the gender asymmetric policy in penitentiary system, to lower danger of a social disbalance, following practical recommendations are offered:

1) Active use of measures of punishment alternative to imprisonment for women without dependence from that, is at it children or not.

2) Formation of cardinally new structure of the social help for the condemned women. And it is very important, that social work with women started to be spent long before their clearing from correctional facility to lower effect of "shock" which is tested by all prisoners at clearing.

3) For carrying out in practice of new social policy it is necessary to prepare a package of training trainings, seminars, consultations for social service providers and the shots working in penitentiary system. Today essentially important there is a form of interaction of administration of prison with the condemned woman, societies and former concluded since the most humane and competent law is powerless when mutual enmity and discrimination divides condemned and a society.

4) Actual problem is material-financial maintenance of prisons. "The collective" or "barrack-type" form of the maintenance practiced in domestic correctional facilities with a view of economy, became a basis for formation of special subculture of the penitentiaries which do not have analogs in world penitentiary practice.

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The mechanism of realization Constitutional laws and freedom of the person and the citizen in the Russian Federation

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Introduction:

The constitution of the Russian Federation recognises the person, its rights and freedom as supreme value, and their observance and protection – a duty of the state. Fundamental laws and freedom of the person and the citizen according to article 1 of the Constitution of the Russian Federation are inaliennable, protected by the law and directly operating.

Maintenance of the rights of participants of criminal legal proceedings should answer representations about the person and its rights as about supreme value and to correspond to the international norms in the field of human rights, to be a component of legal system of Russia. Having headed for construction of a lawful state, Russia has defined one of the most priority directions of the state activity a recognition, observance and protection of the rights and personal freedoms.

It is necessary to notice that the spontaneity and discrepancy of legal instructions essentially limit the public beginnings of the Russian justice on criminal cases, break

the rights of the person. The maintenance of article 6 UPK allows to say the Russian Federation that the duty is assigned to state structures and officials on protection of the rights and interests of the persons involved in criminal legal proceedings. The given duty is based on item 2, 18, 45, 46 Constitutions of the Russian Federation. However the specified appointment of criminal legal proceedings (item 1 p.1 item 6 UPK the Russian Federation) has purely declarative character, That in any way does not promote increase of efficiency of protection of the rights and interests of the person in criminal trial.

Legal maintenance of realisation of fundamental laws and personal freedoms is considered by the author as the major category of a science, defined as specific organizational-legal activity of state structures in sphere of criminal legal proceedings on protection of fundamental laws and freedom of the person and the citizen.

In a society the fair laws connected with maintenance of the rights of the person should operate, function independent courts and bodies of the law and order which enjoy the present trust of citizens [1].

1 Rights and freedom of the person and the citizen as object of maintenance

As has shown the research conducted by the author, the analysis правоприменительной the experts, the obtained data about quantity of the revealed infringements of the legislation, the rights and freedom of participants of criminal legal proceedings, the analysis of the considered criminal cases, dynamics of application of measures of the state compulsion during the pre-judicial manufacture, existing remedial guarantees of participants of criminal legal proceedings are insufficient and do not provide their right and freedom.

Law enforcement bodies of Russia in 2010 investigated about 3,5 million criminal cases, from them 946 thousand are directed to courts. According to the Ministry of Internal Affairs of the Russian Federation, in 2010 every second crime remains unsolved. In 2010 the Russian courts have considered 1 million criminal cases concerning 1,14 million accused. In total in 2010 it is condemned more than 860 thousand persons. In the general order courts have considered 547 thousand affairs, on which 317 thousand persons have been condemned, only 9 thousand

persons have been justified. 19 thousand – on реабилитирующим to circumstances have been stopped by courts of 207 thousand affairs, including. Thus in 2010 the number of complaints during pre-judicial manufacture on actions of officials in relation to 2009 has grown on 60 %. In total in 2010 courts of the Russian Federation have considered 120 thousand such complaints. In 72 % of cases courts Recognised actions of officials unreasonable. In territory of the Rostov region in 2009 it is considered by court of the first instance of complaints to actions and decisions of the officials who are carrying out preliminary investigation, – 2148, in 2010 – 2594, dynamics has made + 20, 8 %. It is Thus satisfied in 2009 210 complaints, in 2010 – 213, dynamics has made + 1,4 % [2].

In 2007 it has been revealed 71 147, and in 2008 91 001 facts of infringement of laws. In 2010 the Office of Public Prosecutor of the Rostov region reveals already 144 439 infringements of laws by bodies of preliminary investigation. In 2009 of such infringements it has been established 95 182, dynamics has made + 51,8 %. Only during the period from January till September, 2011 137 074 infringements of laws are revealed, including by manufacture of a consequence and inquiry 28 630, 2097 public prosecutor's representations are taken out.

In 2010 in Russia by bodies of Office of Public Prosecutor in connection with infringements of observance of the rights and personal freedoms it is revealed: 3 389 456 infringements (from them because of the taken out illegal legal certificates – 313 349); it is considered by court, it is satisfied or stopped in connection with voluntary satisfaction of requirements of the public prosecutor of 678 337 claims, statements, for the sum of 9 036 639 roubles. Only at a pre-judicial stage of criminal legal proceedings 2 524 399 infringements of the rights and personal freedoms (from them concerning minors 30 124) are revealed.

On that the problem of maintenance of the rights of the person during pre-judicial manufacture, at application to it of measures of remedial compulsion, has actual character, specifies also that fact that the complaints directed to the European court under human rights in connection with infringement of human rights on freedom and inviolability of person, fixed in item 5 of the European convention on

protection of human rights and the basic freedom, have the extremely widespread character. The number де the specified category, being on consideration, in 2006 made 82 100, by 2011 has increased to 250 000, i.e. the average gain has put in a year makes in Average almost 42 000 [3].

It is necessary to notice that in criminal legal proceedings the question on protection of the rights of the person has the greatest urgency, scientifically-practical value as during pre-judicial manufacture the rights and personal freedoms owing to features of the given production phase on criminal cases (limitation of publicity, competitiveness, access to necessary for protection of the rights of the information etc. more often are broken). The problem of an establishment of balance between public and private interests is the extremely actual during pre-judicial manufacture, application of measures of compulsion, acceptance of other remedial decisions. Working out of accurate, capacious and as much as possible effective legislative protection frames of the rights of the persons involved in criminal legal proceedings, based on the deep theoretical analysis, is necessary and actual.

Important direction of criminally-remedial lawmaking is liquidation of blanks in legal regulation of manufacture on criminal case. Elimination of legal uncertainty, discrepancy in already effective standards of the criminally-remedial legislation is necessary also. They generate difficulties, promote various abusings from officials, strike at the rights of the person.

The essence of criminal trial consists not only in an orientation of criminally-remedial activity on exposure of crimes really guilty of fulfillment, but also in maintenance of lawful legal character of the given activity. The essence of the Russian criminal legal proceedings should be the basic criterion of a rationality, utility and perspectivity of respective alterations and additions. There was a requirement on the basis of the complex approach to present questions of maintenance of the rights of the victim suspected, accused, other participants of criminal legal proceedings, in the form of uniform system of the norms forming corresponding institute in criminal legal proceedings.

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The essence of criminal trial consists not only in an orientation of criminally-remedial activity on exposure of crimes really guilty of fulfillment, but also in maintenance of lawful legal character of the given activity. The essence of the Russian criminal legal proceedings should be the basic criterion of a rationality, utility and perspectivity of respective alterations and additions. There was a requirement on the basis of the complex approach to present questions of maintenance of the rights of the victim suspected, accused, other participants of criminal legal proceedings, in the form of uniform system of the norms forming corresponding institute in criminal legal proceedings.

The author theoretically develops and proves position that criminally-remedial guarantees of justice and the rights of the person in criminal trial make the uniform, interconnected rigid system. Infringement of any element of this system not only limits the rights of the concrete participant of criminal legal proceedings, but also is

inevitably reflected in all system, leads to an inefficiency, distortion of result of manufacture on criminal case.

The main task of a science of criminal trial, the legislator, first of all, definition of system of the measures providing legal character of manufacture on criminal case. It is necessary to speak about criminal trial, as about the means providing lawful, a legal order of struggle against offenses. Observance of a legal order of investigation and the permission of criminal cases, lawful and well-founded application of measures of remedial compulsion, observance of equality of the rights of the parties, is the same important problem, as well as crime disclosing, exposure of persons guilty of its fulfillment, removal of fair and lawful sentences by courts. It is legislatively necessary to enter accounting indicators which would characterize observance of legality, a manufacture legal order on business and раскрываемость crimes.

The author notices that maintenance of the rights of participants of criminal legal proceedings should answer representations about the person and its rights as about supreme value and to correspond to the international norms in the field of the rights of the person, to be a component of legal system of the Russian Federation. The rights and personal freedoms and qualitative properties defining it are direct object of legal protection.

According to appointment of criminal legal proceedings, its quality and efficiency should be defined legislatively by how legitimate interests of a society and the state, all participants are actually protected Criminal legal proceedings, the rights and personal freedoms are provided, the victim indemnifies a loss put by a crime.

It is necessary to understand set of conditions, means and the ways established by norms of the international, constitutional, criminally-remedial legislation and other laws, and also the remedial activity carried out on their basis providing the persons protection and protection of its physical, moral and mental inviolability, individual freedom, a freedom of action and a personal security as legal guarantees of legality and validity of restriction of personal immunity from any encroachments during criminal legal proceedings.

It is expedient to specify on «justice by manufacture on criminal case» as in a principle, as on logic continuation of essence of appointment of criminal legal proceedings. Under justice by manufacture on criminal case, in its remedial aspect the author understands presence of set of the remedial rules necessary for protection and protection of the rights of the person during criminal legal proceedings, and also steady observance of the specified rights by manufacture on criminal case.

The principle of protection of the rights and freedom of the person and the citizen represents fixed in criminally-remedial legislation a n obligatory, supervising legal status on protection of the rights and personal freedoms, the most general character and direct action, vklju-chajushchee in itself a complex of certain duties of state structures and the officials conducting criminal legal proceedings.

2 Qualified legal aid – a guarantee of protection of the rights and freedom of the person and the citizen

Constitutional law on qualified legal help (p.1 item 48 of the Constitution of the Russian Federation) - one of forms of realization of the right to legal protection.

Realization of the constitutional requirements of the state protection of the rights and freedom of the person and the citizen in the Russian Federation assumes necessity of a legislative establishment of system of is material-legal, remedial, organizational and other guarantees of functioning of justice as special form of the state-imperious activity having by the basic purpose protection of the rights and freedom of the person and the citizen [4].

Important and rather specific place in system of warranting judicial are sewn up constitutional laws and freedom on the one hand, and in creation of appropriate conditions of consecutive realization of problems of legal proceedings, with another, belongs to the constitutional institute of the qualified legal aid. It is defined by the nature of a constitutional law on qualified юридическою the help (item 48), no less than that circumstance that the legal aid rendered to participants of legal proceedings, has not only guaranteeing value for constitutional law realization on judicial

protection (item 46), but in itself presence (or absence) the qualified legal aid can influence also justice realization. Thereby with reference to the constitutional institute of rendering of the qualified legal aid it is possible to speak both about the is subjective-personal beginnings, and about publicly-legal aspects of the given institute.

The institute of the qualified legal aid should become object of special constitutionally-legal researches that has great value in modern conditions of judicial-legal reform, perfection of the legislation and правоприменительной experts on judicial protection of the rights of citizens, overcomings of legal nihilism in a society and the state, increases of level of legal culture. There are bases to speak about improvement of quality of a legal aid, perfection of mechanisms of its maintenance in various forms of legal proceedings andIncreases of responsibility of subjects of rendering of a legal aid that is considered by one of important displays of judicial-legal reform.

The legal nature of the right to the qualified legal aid has constitutionally-guaranteeing character, embodying in the standard maintenance unity of the material and remedial beginnings, it can be considered as the constitutionally-remedial right-guarantee which urged to provide appropriate legal preconditions for consecutive and effective achievement by citizens of the legal purposes, including judicial implementation protection of the rights and freedom. Public relations concerning legal aid rendering personify first of all public interest, and rendering of legal services has publicly-legal value.

The public beginnings considerably amplify in the relations arising in connection with realization of the right to judicial protection as they proceed in the course of functioning of institutes of judicial authority. In this case the subject of rendering of a legal aid acts simultaneously and the subject судопроизводственных legal relationship (item 49 UPK the Russian Federation, chapter 5 GPK the Russian Federation, chapter 6 of agrarian and industrial complex of the Russian Federation). Carrying out corresponding remedial functions, the lawyer (defender) can to influence in a certain measure an outcome of consideration of action of proceeding.

In the mechanism of rendering of a legal aid at judicial protection of the rights and freedom the private-legal beginnings of the person interested in a legal aid have great value also, have the right to conclude independently the contract on rendering of legal services, to select optimum forms of reception of such help of a pas to a basis of a principle of freedom of the contract, etc.

At the same time guaranteeing value of institute of rendering of legal services for appropriate judicial protection of the rights of citizens can be provided only on the basis of balance achievement between the private-legal and public beginnings of the given institute. Accordingly, in the course of legislative regulation of public relations on legal aid rendering maintenance of appropriate balance between such constitutionally is necessary

Protected values, as warranting of the qualified and accessible legal aid, independence and independence of judicial authority and freedom of contractual definition of the rights and duties within the limits of civil-law relations on rendering of a legal aid [5].

Perfection of civil-law contractual forms of rendering of a legal aid and, in particular, settlement of possibility of use so-called «the success fee» is necessary.

In November, 2011 the Federal law «About a free legal aid in the Russian Federation» has been signed. Legal aid has received legal regulation and has got system character. In the law are put stimulus for development nonstate rendering systems lawyers the free help through the nonstate centers, established by awyer chambers and lawyer formations. According to the Law of the Russian Federation «About не¬коммерческих the organizations» they have the right to count on out-of-competition rent of the premises which are in the state or municipal property, and a preferential rent.

The free help poor to citizens has increased. It can be rendered now in social sphere and in public health services sphere, under transactions with real estate, on protection housing, labor and the family rights, on protection of the rights of consumers. Cases and a rendering assistance order in administrative proceedings, and also in other cases can be established.

It is important that under the law authorities of subjects of the Russian Federation are allocated by power expand the list of categories of the citizens having the right to reception бес¬платной of a legal aid and cases of its rendering, and also to make decisions on granting in case of emergency the help grazh-danam, appeared in difficult situations. The right of subjects of the Russian Federation will establish additional guarantees of reception лучения a free legal aid to stimulate development the subsidized help. The citizen, whose income slightly exceeds a living wage. Can acquire the right to compensation of a part of expenses, incurred it in connection with the reference to lawyer. Such direction development the state system is perspective also does possible to expand a circle of the people needing in legal по¬мощи, but not having possibilities in full it to pay [6].

Important condition of maintenance of balance constitutionally significant values in the standard maintenance of institute of the qualified legal aid is consecutive realization in legislative and правоприменительной activity of its constitutional principles. Their analysis has allowed to draw a conclusion that they represent difficult multilevel – from the point of view of the standard maintenance – system which receives a concrete definition in the branch remedial and special legislation, as a result each concrete principle gets universal character, receiving realization in all forms of legal proceedings.

The major problem in sphere of maintenance of availability of justice for citizens of Russia is consecutive realization of the right to reception of the qualified legal aid free of charge. Working out optimum organizational-pravovoju the mechanism rendering of a free legal aid should occur to the account of the international standards fulfilled in this sphere. The author analyses practice ESPSH and conventional criteria of rendering of a free legal aid in court to them are revealed concern: the financial criterion - assumes necessity I will estimate real needs of the citizen and absence of obvious certificates of the return; the criterion of "interests of justice» - includes about itself following elements: 1) gravity of an offense, 2) complexity has put, and 3) ability of persons; To represent itself it is independent, the criterion of efficiency of free of charge legal aid - assumes granting to the interested

person of the professional and qualified legal support in conditions which allow to use the corresponding help really.

The constitutional institute of rendering of the qualified legal aid has universal proceedings value and covers itself all forms and all stages of realization of the right to judicial protection, since a stage of filing of application in court and finishing the moment of restoration of the rights at end of execution of the taken out judgement.

To the decision of specific targets of improvement of quality of a legal aid essentially would promote, according to the author, along with entering of separate changes into the current legislation acceptance complex, interbranch under the maintenance ФЗ «About the qualified legal aid in the Russian Federation», and also acceptance as its concrete definition of laws of subjects of the Russian Federation.

3 Perfection of the mechanism of realization of the rights and freedom of the person and the citizen

Absence in the criminally-remedial law of the mechanism and guarantees of realization of the rights of participants of criminal legal proceedings often conducts to an arbitrariness from officials, to infringement of the rights and personal freedoms.

In the mechanism of realization of the rights and personal freedoms it is necessary to distinguish substantially special guarantees, their maintenance and guarantees of their protection in cases of offenses.

In the legal literature the term «the mechanism of guarantees of the rights» meets often enough. However till now many aspects of this problem remain unexplored, there is no mechanism of due complex scientific consideration of the specified question. Available works devoted to only separate aspects of warranting of the rights and freedom - ensure, protection, protection or other activity of state structures [7]. Till now in a science of the theory of the state and the right and a constitutional law it is not developed the uniform approach to definition of a place of legal guarantees in the general system of protection of the rights of the person.

Lacks of theoretical judgement of the mechanism of legal guarantees of the rights the person negatively influences first of all quality of accepted laws.

Research of the mechanism of legal guarantees assumes the system approach to their consideration. Necessity of the system analysis of guarantees of human rights and the citizen is caused considerable weed-ticheskimi processes in state life, change of legal approaches to fastening of guarantees and regulation of the bases implementation the rights and personal freedoms.

Theoretical and practical working out of the mechanism of a guarantee of constitutional laws and freedom - a necessary condition of active work lawmaking bodies. The mechanism of legal guarantees can be presented as in a statics (set of legal means), and in dynamics through action of institutes (legal activity of subjects of human rights and the authorized subjects). L.N.Fedorova defines the mechanism of legal guarantees of constitutional laws and freedom чело¬века and the citizen of the Russian Federation in a statics as embodied in legal behavior of subjects of the specified rights set of legal conditions of realization and protection frames of these rights with a view of their realization in life [8].

The concept «the mechanism of legal guarantees» is necessary to distinguish «the mechanism of realization of human rights» from a category. These are closely connected, but nevertheless the various parties of process of realization of human rights. If the first reflects practice of creation and operation special legal mechanisms and the institutes promoting realization of human rights, the second - to practice of the rights. The mechanism of legal guarantees and the mechanism of realization of human rights correspond as a guarantee and object of warranting.

The mechanism of legal guarantees in operation is represented as set of institutional guarantees, where structures state. The authorities are investigated as institutes judicial and extrajudicial protection of the rights, thus their role in the mechanism of guarantees is inadequate.

There are no accurate differentiations of concepts "realization", "maintenance", that results in the theory and in practice in their possibility identification. It

complicates isolation of legal guarantees in the form of the independent mechanism, capable to have regulatory influence on process of realization of constitutional laws.

Intrinsic and backbone element of the mechanism implementation is the behavior of carriers of human rights which is defined through a category «lawful behavior» more often.

And a main objective of guarantees of human rights maintenance of uninterrupted action of human rights, implementation their protection and restoration is main. In this case the purposes of guarantees are subordinated to the purposes of realization of human rights.

The mechanism of maintenance and the mechanism of guarantees pursue in process realizations of human rights rather isolated purposes. In the legal literature has developed new legal a direction which has received the name remedial (P.V.Anisimov, A.V.Stremouhov, C.A. The Mordvinian, etc.). The sense it directions consists that concept of human rights considered in indissoluble communication with possibilities of their protection. Thus the central place occupies the right to legal protection. Implementation this right involves occurrence of special right-protective relations.

The specified position has essential value for understanding of the mechanism of legal guarantees of human rights and the citizen in the Russian Federation. Elements of the specified right are fixed in the Constitution of the Russian Federation, and also in the major international legal certificates, in the current branch legislation.

Research of legal guarantees as independent category in the form of the isolated legal mechanism will be help to overcoming.

The authorities are investigated as institutes judicial and extrajudicial protection of the rights, thus their role in the mechanism of guarantees is inadequate.

Undeveloped and imperfection of remedial forms is necessary to expand with a serious brake, an obstacle of effective realisation of constitutional laws of the person area of is-using of the remedial form not only in judicial, law-enforcement scope of application of the right, but also in area regulations of positive actions.

The standard basis of legal guarantees is made by norms of branches material and a procedural right. The core criterion such classification is the sphere of their fastening.

S.A.Arbuzovoj maintenance of the rights and freedom of the person is considered, how functions of the state and is established that any state realises this function in this or that volume. In the general mechanism of maintenance of the rights and freedom of the person and the citizen as an operating subsystem the state-executive mechanism of the rights and freedom of the person and the citizen is allocated, problems of functioning of the state-executive mechanism of the rights and freedom of the person and the citizen [9] are allocated.

The category «maintenance of the rights and freedom of the person and the citizen» from the point of view of methodology of scientific research is defined ambiguously: as the purpose of the mechanism of the government, the purpose or a problem of the state. Expediently considers essence of maintenance of the rights and freedom of the person and the citizen as objectively necessary line of activity of the state reflecting it social appointment and having a legislative regulation. Thus, maintenance of the rights and freedom of the person and the citizen is function of the state. The purpose of the modern state with reference to analyzed categories - achievement of real security of the rights and freedom of the person and the citizen.

The maintenance of the state maintenance of the rights and freedom of the person and the citizen is reflected in a triad of kinds of activity. The first of them - warranting, that is creation of conditions for realisation of the right or it Restoration. The second direction is the organization of the process of realization by the person of the subjective rights, the third - protection and protection of the rights and freedom of the person and the citizen.

S.A.Arbuzovoj is made definition of the state-executive mechanism of maintenance of the rights and freedom of the person and the citizen as the complete system based on certain principles including static and dynamic elements. Subjects concern a static part, their problems and function, and also principles and legal bases

of activity of the mechanism object. Dynamic components are activity of public employees, its forms and communicative communications between subjects.

Classification of principles of functioning of the state-executive mechanism of maintenance of the rights and freedom of the person and the citizen reflects, on the one hand, features of management as kind of the state activity, with another - features of object of administrative activity - spheres of the right and freedom of the person and the citizen, and includes socially-legal (general), backbone and organizational-legal (special) principles.

There is a question on security of the given rights and freedom as by means of maintenance the passive recognition of the subjective right is transformed to its real realization. The essence of maintenance of the rights of citizens consists that this objectively necessary line of activity of the state reflecting it social appointment and having a legislative regulation. Thus, maintenance of the rights and freedom of the person and the citizen is state function.

The nature of this or that function influences formation of the mechanism of realization of the function. The analysis of works with reference to the specified problematics allows to assert that the definition «the mechanism of maintenance of the rights and freedom of the person» hasn't received still a wide circulation, Within the limits of the characteristic of this mechanism and its aspects it is possible to note the scientific Researches of such scientists-theorists, as V.L.Butylin, A.C. The Mordvinian, JU.V.Anokhin who has brought the considerable contribution to studying of the specified problematics. So, for example, the socially-legal mechanism of maintenance of human rights and the citizen is offered A.S.Mordovtsom as «system international and national-public funds, rules to the procedures guaranteeing respect and conditions of worthy existence of the person, observance, protection and protection of all its rights and freedom» [10].

V.M.Malinovsky considered questions devoted to the complex analysis constitutionally-rules of law, regulating the mechanism of introduction and realization of restrictions of the rights and freedom of the person and the citizen in the Russian Federation, problems of realization of the significant purposes put in a basis

of given restrictions, to studying of mechanisms and influence levers on public relations by application of constitutionally-legal restrictions [11].

As notices O.N.Andreeva that «in UPK the Russian Federation of the mechanism and guarantees of realization of the rights of participants of criminal legal proceedings conducts absence to a possible arbitrariness from outside empowered persons» [12].

As modern criminal trial of Russia has the mixed form so far as remedial guarantees at all originality are united by general purpose; mechanisms of their actions also are interconnected. The mechanism of actions of legal guarantees of the rights and legitimate interests of the persons participating in criminal legal proceedings is system of a legal procedure and the state structures realizing these norms in a certain order. Existence of such mechanism induces participants of criminal legal proceedings to bring an attention to the question on necessity of realization of the rights.

Conclusions

The author considers the mechanism of realization of the rights and personal freedoms during criminal legal proceedings, its components. In the mechanism of realization of the rights and personal freedoms it is necessary to distinguish substantially special guarantees (means, measures), their maintenance and guarantees of their protection In cases of offenses. By working out of the mechanism of realization and maintenance of the rights of the person during criminal legal proceedings justice is considered by the author as the qualitative characteristic both all mechanism, and separate elements making it.

Realization of the rights and personal freedoms represents the socially-legal mechanism. As an organic component of the specified mechanism guarantees of the rights and personal freedoms act: social conditions and special legal means.

The category «the mechanism of maintenance of the rights of the person» consists of following elements: the rules of law fixing the rights and freedom; the legal facts of occurrence and the termination of the given rights and freedom; activity

of special representatives of the bodies participating in maintenance of guarantees of the rights of the person; the special legal procedures, called to observe, protect and protect the right and freedom; level of legal culture of a society; institute of legal responsibility.

The mechanism of actions of legal guarantees of the rights and legitimate interests of the persons participating in criminal legal proceedings, is system of a legal procedure and the state structures realizing these norms in a certain order. Existence of such mechanism induces participants of criminal legal proceedings to bring an attention to the question on necessity of realization of the rights.

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VIOLATION OF INTELLECTUAL PROPERTY LAW THROUGH THE ELECTORAL AGITATION PROCESS: TO THE PROBLEM OF BRINGING TO ACCOUNT.

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Introduction.

Article 3 of the Constitution of the Russian Federation establishes that the supreme direct expression of the power of the people shall be through referenda and free elections [1].

The right to elect and be elected to state bodies of power and local self-government bodies is guaranteed in art. 32 of the Constitution. Meanwhile not only electoral rights but conflicting interests of various political groups may be implemented through electoral process. Frequently it is attributed to violations of electoral law and in turn through electoral disputes. And current demonstrations and meetings in favor of "fair elections" after the Russian Parliament elections on the 4th of December 2011 clearly prove it.

This article is devoted to legal regulation of responsibility of candidates for the violation of the Russian intellectual property law through electoral agitation process. The theoretical comprehension of this problem is all the more important due to various approaches to law-enforcement in considering electoral disputes.

The author analyzes the definition, forms, methods and restrictions of electoral agitation; investigates grounds for bringing to account, significant features of constitutional responsibility of candidates; suggests amendments to current legislation in order to guarantee free expression of the will during elections.

To characterize the level of scientific readiness of this topic we have to note that it has been a burning issue since the political regime and the state system form were changed in Russia. The declared challenges are also presented in researches of S.D. Knyazev, S.V. Bolshakov, A.G. Golovina, O.F. Afanaseva, A.N. Borisova.

Electoral agitation: definition, forms, methods, restrictions.

Constitutional guarantees of freedom of mass-media, freedom of expression, political and ideological pluralism led to specific approach to electoral law development, including legal regulation of information support of elections. In order to balance conflicting interests of electoral process actors restrictions and responsibility measures are set in the main law that governs all types of elections in Russia. So, the Federal Law "About general guarantees of electoral rights and the right to referendum of citizens of the Russian Federation" (hereinafter called – "General Guarantees Law") [4] set particular regulation of information support of elections in Chapter VII and responsibility measures in Chapter X.

As the Constitutional Court of the Russian Federation interpreted in Decision № 10-п of the 14th of November 2005 "elections may be considered free only if citizens are really guaranteed the right of receiving and spreading of information, as well as the freedom of expression" [7]. From this perspective, legal restrictions imposed on electoral agitation are called for providing aforementioned guaranties. And the prohibition against intellectual property violation is one of such restrictions.

In accordance with pt. 4 of art. 2 of General Guarantees Law electoral agitation is an activity held during an election process with the purpose to motivate voters to vote for or against a candidate, candidates, a list or lists of candidates. It is worth mentioning that such a definition reduces misinterpretations owing to regulation of pt. 1 art. 48 of General Guarantees Law which guarantees citizens and public associations the right to engage in agitation in accordance with the law.

Thus, the analysis of forms, methods and restrictions of electoral agitation has essential importance for the exploration of the declared topic. It will also make it possible to estimate the quality of legal procedures of bringing candidates to account for intellectual property law violations.

The forms of electoral agitation are defined in pt. 2 art. 48 of General guarantees Law as:

a) call to vote for or against a candidate, candidates, a list or lists of candidates;
b) expression of preference for any candidates, electoral associations, and in particular indication of candidate, list of candidates, electoral association for which the voter is going to vote (except for the publication of the results of public opinion polls in accordance with pt. 2 art. 46 of General Guaranties Law);
c) description of possible consequences in case one or another candidate is or is not elected; one or another list of candidates is or is not admitted to distribution of deputy mandates;
d) spreading of information which mainly contains data about any of candidate (candidates), electoral association in combination with positive or negative comments;

e) spreading of information about candidate's activity if not a professional or official;

f) activity which promotes positive or negative attitude of voters to candidate or electoral association which nominated a candidate or a list of candidates.

Meanwhile pt. 2.1 of art. 48 of General Guarantees Law establishes that actions set in sp. "a" of pt. 2 of art. 48 committed by mass-media representatives constitute agitation if made with the purpose to motivate voters to vote for or against a candidate, candidates, list or lists of candidates, and actions set in sp. "b-d" of pt. 2 of art. 48 are recognized to be electoral agitation if made with the afore-named purpose more than once.

To sum up, the list of electoral agitation forms is exhaustive by contrast to its methods. Thus, in accordance to pt. 3 of art. 48 of General Guarantees Law electoral agitation may be held with the following methods employed:

a) on broadcasting organization channels and in periodicals;

b) by running public agitation campaigns;

c) by issuing and distributing printed, audiovisual and other agitation materials;

d) by other not legally prohibited methods.

We are convinced that when electoral agitation forms set as an exhaustive list and agitation methods are not restricted the balance between two concurrent groups of guarantees may be provided. Thus, principles of free expression of will and the equality of candidates on the one hand may be reconciled with freedom of expression and the right to information on the other hand.

From the perspective of the first group of guarantees, legislator establishes limits in order to distinguish agitation from the other forms of information support during elections. The accent is made on an objective side of actions. That, in turn, provides legal certainty in responsibility grounds estimation.

From the perspective of the second group of guarantees, candidates, electoral associations and other actors who hold agitation have an opportunity to bring voters required data taking into account its qualitative and quantitative characteristics,

distribution cost, peculiarities of perception. Thus, legislator establishes time, subject and content limits for agitation spreading.

As it is stated in art. 49 of General Guarantees Law agitation period begins from the day of the nomination of a candidate or the list of candidates (on broadcasting organization channels and in periodicals 28 days before the ballot day) and is to be ended at 12.00 p.m. 24 hours before the ballot day.

State and municipal bodies or employees, heads of organizations if using their duty position, representatives of mass-media organizations and other actors which are mentioned in art. 48 of General Guarantees Law are prohibited from carrying out electoral agitation.

Regarding the content limitation, it is generally set in art. 56 of General Guarantees Law. For example, agitation coupled with mass-media freedom abuses or bribery of voters or spreading negative information on broadcasting channels is prohibited. Certain violations lead to various responsibilities with procedural peculiarities. That is broadly covered in researches of S.V. Bolshakov, S.D. Knyazev, T.G. Levchenko, M.S. Mateykovich, N.V. Vitruk.

In its turn, the prohibition of violation of Russian intellectual property law through agitation process was added into pt. 1.1 of art. 56 of General Guarantees Law by the Federal Law № 225-FZ from 05.12.2006 [6] and has been operative only since the 7th of December 2006.

Responsibility of candidates: peculiarities and restraints.

As it may be derived from legal statement of pt. 1.1 of art. 56 of General Guarantees Law, agitation which violates intellectual property law of the Russian Federation is related to the form of mass-media freedom abuse. In spite of the aforementioned article set the open list of mass-media freedom abuses, electoral agitation coupled with violation of the intellectual property law, calling for extremism [5], calling for discrimination and with Nazi symbols use is defined as such abuse distinctly.

In case of mentioned violations the court has the right to: 1) abolish decision of election commission about registration of candidate (list of candidates); 2) abolish

registration of a candidate; 3) abolish registration of a candidate within the registered list of candidates; 4) abolish decision of election commission about the results of ballot, election results. The author considers that realization of such judicial authority constitutes bringing to constitutional responsibility for violation of electoral legislation [about definitions of "constitutional" responsibility see: 11,13, 14].

Since a number of violations during electoral agitation do not let the court bring candidates to aforementioned account, we have to conclude that the responsibility of candidates is *restrained by its form*.

Besides, the analysis of art.76 and art. 77 of General Guarantees Law leads us to an implication that electoral disputes are *restrained by its actors* [about definition and classification of electoral disputes see: 13].

Thus, depending on the required responsibility measure, the proper applicant differs. It may be an election commission which registered a candidate (list of candidates), a candidate registered in the same electoral district or prosecutor (*special subject*). And according to pt. 10 of art. 75 of General Guarantees Law, results of ballot or election results may be disputed by any citizen (*general subject*).

Besides, art. 78 of General Guarantees Law sets *time restraints* for bringing to the court and resolving electoral disputes. For example, complaint for decision of election commission about registration or not registration of candidate (list of candidates) may be submitted within ten days from the day of the challenged decision. If the period is missed it may not be restored.

After the official publication of election results, complaint may be submitted to the court within one year.

If a complaint against violation of electoral rights is submitted to the court until the ballot day within the electoral campaign, judicial decision should be made within five days, but not later than the ballot day. And if a complaint is submitted on the ballot day or the next day, it should be resolved immediately. In an exceptional case judicial decision may be made within ten days.

Complaints against results of ballot or election results should be resolved within two months.

Complaints against registration of candidate, lists of candidates may be brought to the court within eight days before the ballot day (including revote). The judicial decision should be made within five days before the ballot day.

In general, legal restraints (*regarding forms, applicants, periods*) of responsibility measures that may be applied by the court to candidates are consistently interpreted in court practice.

Meanwhile, it is essential to note the complex systematization of General Guarantees Law and blanket rules profusion. We think that it complicates legal position building for the parties of electoral dispute. And as S.D. Knyzev and R.A. Ogorodnikov rightly point out, "the contradictoriness and instability of legal regulation of electoral relationships" are a typical cause of electoral disputes [13, p. 3]

From our point of view, various judicial practices are increasingly stipulated by the legal prescription that does not bind the court but gives it *the right to bring candidates to account*.

Since, in addressing the declared topic we have to concentrate on the peculiarities that govern judicial procedures of bringing candidates to account for the violation of Russian intellectual property law through agitation.

Thus, sp. "d" of pt. 7 of art. 76 of the General Guaranties Law contains the blanket rule that permits the court to abolish registration of candidate for such a violation. It is worth mentioning that from pt. 8 of art. 76 of the General guarantees Law follows that this sanction may be applied at the discretion of the court. And in practice, the court should estimate the extent of violation that is driven from pt. 3 of art. 55 of the Constitution of the Russian Federation. This constitutional rule provides balance between private and public interests as establishes principle of proportionality between the limited and the secured rights.

For example, district court of the Republic of Karelia found violation of the Russian intellectual property law in agitation of candidate P. But in its decision of the 1st of March 2007 the registration of candidate P. was not abolished. As it was stated in judicial decision, "the sanction that led to restriction of electoral rights must be

applied in respect to the principle of proportionality set in pt. 3 of art. 55 of the Constitution of the Russian Federation. Thus, it is not acceptable to follow only formal grounds for registration abolition… without bearing in mind the circumstances that prove the insignificance of violations of the Russian intellectual property law" [15, p. 57].

The same legal statement may be seen in the decision of the district court of the Republic of Karelia of the 11th of June 2009 in the case concerning abolition of candidate's registration due to copyright law violation through agitation [16].

Since, there is another approach when the court applies a sanction regardless of the extent of violation. For example, it is stated in the decision of PrymorskyKrai's Court of 28th of September 2006 that the rule of sp. "d" of pt. 7 of art. 76 of the General guaranties Law "makes it possible to apply sanction regardless of any consequences or extent of intellectual property law violation through agitation" [15].

The same may be seen in the decision of the Highest Court of the Republic of Karelia of 28th of November 2011. The court abolished registration of candidate M. Because of the violation of copyright law without estimation of the violation extent [18].

The author is convinced that the most proper approach to bringing candidates to constitutional account is when the court follows pt. 3 of art. 55 of the Constitution of the Russian Federation rule.

Moreover, this approach reconciles legal view of the Constitutional Court of the Russian Federation given in decision №3-P of 18th of February 2000 [8] as follows: "defining remedies of public interests protection, legislator has to use only those that exclude opportunity to disproportional restriction of human rights and freedoms in particular case… public interests set in pt. 3 of art. 55 of the Constitution of the Russian Federation may justify only those legal restrictions of human rights and freedoms that are adequate to socially required result…".

To sum up, legal restraints that should be considered by courts when bringing candidates to account for electoral law violations are necessary to provide a "socially required result". It is obvious that interests of a particular political group correspond

to the interests of its electorate. And it also provides a public interest in relation to principles of free and alternative elections. From this perspective the author considers that discretion of the court to apply responsibility on candidates for violation of electoral law is legitimately established.

Though, in case when the court does not apply responsibility on candidates when violation is defined, principles of equality of candidates, free elections, inevitability of punishment may be at stake. And since only free elections are considered to be the supreme direct expression of the power of the people, the author thinks that obligatory informing of voters about defined violations will on the one hand, provide free expression of will and on the other – prevent violations.

Responsibility of candidates for intellectual property violations: challenges and peculiarities.

Violation of the Russian intellectual property law is the only position from the list of mass-media freedom abuses examined above that may not be the ground for abolition of the results of a ballot or election results.

We think that such an exception does not correspond to the structure peculiarity of the sp. 1 of pt. 1.1 of art. 56 of the General guaranties Law mentioned above. That, in turn, reduces the protective power of the institution of responsibility of candidates for electoral law violations. And some researchers cover this issue.

Thus, R.A. Okhotnilov defines electoral disputes as "electoral relationships of a protective character" [12, p. 23]. In its turn S.V. Bolshakov argues that "responsibility for violations through agitation along with the other types of responsibility is a public tool to provide social demand in order during electoral process" [10, p. 59].

To conclude, we may define the following peculiarities of the institution of responsibility of candidates for the Russian property law violations. *Firstly*, this institution has complex legal regulation. *Secondly*, there are many evaluative categories which govern sanction application to violators. *Thirdly*, though responsibility has a public character, it does not exclude the possibility of applying measures of civil, administrative and criminal responsibility in some cases. *Fourthly*,

the responsibility of candidates for the Russian property law violations is related to the form of constitutional responsibility.

These peculiarities are emphasized by V.V. Ignatenko, S.D. Knyazev and V.A. Nomokono as follows: "constitutional responsibility for electoral law violations means application of constitutional sanctions to violators" [14, p. 8], including abolition of registration of candidates and election results.

In its turn, T.G. Levchenko argues that named peculiarities may not be the ground for defining constitutional responsibility in electoral law as a separate type of responsibility [11, p. 29].

In practice bringing candidates to account is not an easy task from the perspective of evidence. It is attributed to specific character of the intellectual property objects and its complex legal regulation. In particular, expert examination may be demanded. But if the procedural period for making a judicial decision runs out, proceeding will be dismissed as it is set in art. 220 of the Civil Procedural Code of the Russian Federation [3].

For example, a case about abolition of registration of candidate N. was dismissed by the decision of the Highest Court of the Republic of Karelia because the procedural period for making a judicial decision has run out [15, p. 94-96].

Summary.

Bearing in mind the challenges of bringing candidates to account for violations of the Russian intellectual property law, the author suggests the following amendments to current legislation.

Firstly, art. 78 of the General Guaranties Law should be added with pt. 6 and pt. 7 of the following content: "6. The judicial decision that defines violation of electoral law by candidates or electoral associations through agitation, if brought into force, should be distributed by mass-media organizations which provide information support of elections in an obligatory way.

7. Along with the information about candidates (list of candidates), electoral associations the judicial decision that defines violation of electoral law by candidates

or electoral associations through agitation, if brought into force, should be distributed on the polling stations in an obligatory way".

Secondly, violation of the Russian intellectual property law if it prevents identification of the true voters' will should constitute a legal ground for abolition of the results of ballot and election results. Accordingly the list of legal grounds set in pt. 2 of art. 77 of the General Guaranties Law has to be extended.

Thirdly, systematization of the General Guaranties Law has to be improved by gathering all grounds for application of responsibility measures for violation of electoral law in Chapter X.

The author believes that such amendments will provide principles of free expression of voters' will and equality of candidates in a better way.

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