



ILLEGAL USE OF PHYSICAL FORCE AND SPECIAL MEANS AGAINST PRISONERS: CRIMINOLOGICAL CHARACTERISTICS AND PREVENTIVE MEASURES

Alexander M. Smirnov

Research Institute of the Federal Penitentiary Service of Russia, Moscow, Russia

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The subject. The article outlines the criminological characteristics of the illegal use of physical force and special means against persons deprived of their liberty.

The purpose of the article is confirmation or confutation of the hypothesis that the reasons for the unlawful use of force methods against convicts are related to the nature of the illegal actions of such convicts.

The methodological base of the study was an analysis of 15 cases of unlawful use of physical force and special means by employees of the correctional facilities against imprisoned convicts committed in the period from 2016 to 2019. The author analyzed 12 sentences on bringing employees of the correctional facilities to criminal responsibility for the unlawful use of these forceful methods, as well as a survey of about 190 employees serving in various positions in the correctional facilities where unlawful use of force was carried out. In addition the scientific works of other authors that affect this issue were studied.

The main results, scope of application. The criminological characteristics of the illegal use of physical force and special means by employees of the correctional facilities against imprisoned persons are presented. The article includes a description of such victims; a description of the circumstances of use of force; a description of the employees of the correctional facilities who allowed unlawful use of force; the reasons and conditions that contribute to the implementation of this use. Based on the above, some measures are proposed that contribute to the optimal solution of the issue of prevention of the unlawful use of force in the Russian penitentiary practice.

Conclusions. The unlawful use of physical forces and special means was carried out against convicts who have destructive moral and psychological qualities, are characterized by a high degree of criminal infection, express a negative attitude towards order and conditions of serving sentences and do not obey the legal requirements of correctional staff. A generalization of the personal characteristics of employees who unlawfully use physical force and (or) special means indicating that they are characterized by positive psychological qualities in general. They strive to be guided by the regulations governing the professional activities of the penal system officer and are positively active in fulfilling their duties. The most probable reasons for the unlawful use of forceful methods of influence against convicts are related to the nature of the unlawful actions of such convicts, provocations, negative features of service due to the specifics of places of deprivation of liberty. Measures taken to prevent the occurrence of negative phenomena in domestic politics can have a positive impact on improving the functioning of the penal correction system, which is in line with legal regulations of a national and international nature.

1. Introduction.

As well-known, persons who have committed the most socially dangerous criminal acts that have caused significant harm to human and civil rights and freedoms, society and the state, and other social goods and values are sentenced to imprisonment. These individuals deserve the strictest state response, which contains elements of adequate punishment, consistent with the nature of the acts committed by them and the consequences resulting from them [1]. That is why Russian criminal law rightly adheres to the principle of proportionality of punishment with the nature and degree of public danger of the committed criminal act (part 1 of Article 6 of the Criminal code of the Russian Federation). However, on the other hand, it enshrines the principle of humane treatment of criminals (Article 7 of the Criminal code), which is the result of a long-term struggle of various humanists for the rights and freedoms of persons who cause law-abiding citizens various kinds of suffering, often irreparable and "crippling" their lives.

As a result, the Russian penal enforcement system adheres to the principles of humane, legal, and respectful treatment of the most dangerous criminals who are sentenced to the most severe type of criminal punishment – imprisonment. It should be noted that the range of manifestations of humanism towards such criminals in practice is constantly expanding, which is manifested in solving issues of improving the order and conditions of serving sentences, ensuring greater protection of their rights and freedoms. All this is due to the active participation of international and domestic human rights organizations.

Currently, one of the main vectors of development of Russian criminal policy is the imposition of punishment in the form of

imprisonment only in extreme cases, for committing the most dangerous criminal acts. At the same time, the appointment of such a punishment must be argued in detail by the court in its verdict that another type of state coercion is not applicable to the convicted person in order to effectively achieve the goals of criminal punishment. The fact that the courts are working quite effectively in this direction is indicated by the fact that according to the analysis of data from the Judicial Department of the Supreme court of the Russian Federation, the sentencing of actual imprisonment has decreased by 17 % over the past five years (from 21170 convictions in 2015 to 175122 in 2019). The reduction of the number of such convictions is directly related to the reduction in the number of all those convicted in the period under review by 18.5% (from 733,607 convictions in 2015 to 598,214 in 2019). Nevertheless, the share of convictions for serving actual imprisonment among other state enforcement measures remains almost unchanged – no more than 30 % (in 2015, it was 28.8 %, in 2019 – 29.3 %).

In connection with the above, it is not surprising that the most criminally dangerous part of criminals who have the most negative attitude to society and the state, leading a criminal lifestyle, is concentrated in places of detention [2]. That is why, as practice shows, it is extremely difficult for a significant part of such criminals to comply with the conditions of serving their sentences and comply with the legal requirements of employees of the correctional institutions administration [3, 4]. For example, according to the analysis of statistical data of the Federal penitentiary service (FSIN of Russia) in the period under review, the number of violations of the established procedure for serving sentences committed by convicted persons serving sentences in an adult institution increased per

1,000 people—from about 1,100 cases in 2015 to about 1,400 cases in 2019. For malicious violations in this period of time, this indicator remained almost unchanged and was kept at the level of about 40 violations.

Of course, such high delinquent activity of those sentenced to deprivation of liberty must be restrained somehow and done quite effectively, since this directly affects the safety of the IU staff, persons visiting these institutions, as well as other convicts who are in them. One of the effective means for this is the use of physical force and special means. This application acts as a last resort, the result of which, based on the current situation, may be causing harm to the life and health of the convicted [5]. In this regard, the implementation of this measure is strictly regulated.

That is why the Federal penitentiary service of Russia pays special attention to the prevention of illegal use of physical force and special means against those sentenced to imprisonment. For this purpose, it is constantly developing measures to prevent this negative phenomenon in the domestic penitentiary practice, while appealing to the scientific community. At the same time, despite these measures, cases of such illegal use continue to occur, since the employees of the law enforcement Agency responsible for maintaining law and order can sometimes not always restrain their emotions and fully direct their actions, understanding what category of persons they have to work with, while being in negative, stressful conditions of places of detention.

The analysis of statistical data of the Federal penitentiary service of Russia shows that the work of this Department in the direction of prevention of the illegal use in question shows not enough satisfactory results yet, since in the above-mentioned period of time the number of prosecutions of employees

of the IU for this use has increased almost 15 times.

The above shows the relevance and timeliness of conducting criminological research, the purpose of which is to study the illegal use of physical force and special means by employees of the IU against criminals serving sentences in places of deprivation of liberty, followed by the development of scientifically based proposals and recommendations for the prevention of this negative phenomenon in domestic penitentiary practice.

A certain contribution to this work is this scientific Article, which presents a criminological characteristic of the illegal use of physical force and special means by employees of the IU in relation to those sentenced to deprivation of liberty, including a characteristic of such convicts against whom this use was committed; a characteristic of the circumstances of the Commission of this use; a characteristic of employees of the IU who allowed such use; the reasons and conditions that contribute to the implementation of this use. Based on the above, some measures are proposed that contribute to the optimal solution of the issue of prevention of this negative phenomenon in Russian penitentiary practice.

2. The empirical base of the research

included the analysis of 15 cases of misuse by the staff of IU of physical force and special means against convicted persons serving sentences of deprivation of liberty committed by these officers in the period from 2016 to 2019, 12 sentences about attracting IU employees to criminal liability for wrongful application of power methods of influence, as well as questionnaires about 190 employees serving in various positions in IU, which was made of the studied application. In addition, when writing the work, we studied the scientific works of other authors that affect this issue.

3. Characteristics of convicted persons against whom physical force and special means were unlawfully used.

Our study showed that such convicts were men of mature age (a more detailed distribution by age category showed that the maximum number (30 %) of such convicts were between the ages of 31 and 35, followed by those aged 26 to 30, 36 to 40, and 41 to 45 in equal proportions (20% each), and the least victims of the use in question were those aged 19 to 25 (10%).

The study of the educational level of these convicts allowed us to conclude that it is quite low, since before the conviction, almost every second of them had no higher than secondary professional education. At the same time, almost one in five of them managed to get only incomplete secondary education. The rest of the convicted persons had only a full secondary education before committing the criminal act.

Convicted persons who were victims of unlawful use of force were sentenced to imprisonment mainly for committing mercenary and violent criminal acts, the object of which was most often property (27.3 %), the established turnover of weapons and ammunition in the country (27.3%), the regulatory rules for the turnover of psychotropic substances and drugs (18.2%), the health of citizens (18.2%) and their lives (9%).

Summarizing the data obtained showed that only half of the convicted persons in the study group partially admitted their guilt in the crime committed; one in ten absolutely did not admit their guilt in the criminal act for which they served their sentence, which demonstrates their relatively low degree of responsibility for the malicious acts committed.

These convicts are characterized by a high degree of criminal infection and they tend

to lead an anti-social lifestyle, since most of them (80 %) are in prison more than twice. At the same time, 40% of them were sentenced to long terms of imprisonment (more than 5 years).

The vast majority of convicts in the study group (90 %) were determined by the court to serve imprisonment in a high-security penal colony (IC). At the same time, four out of five such convicts were sent to these institutions intended for persons who had previously served imprisonment.

The predominance of negative psychological characteristics over positive ones was revealed in these convicts. Among them, aggressiveness, conflict, rudeness, impulsivity, unstable self-esteem, increased emotionality, anger, resentment, irritability, cynicism, vindictiveness, egocentrism, lack of goals in life, pessimism, lack of cognitive activity, depression, negative attitude to established norms and rules of behavior, flaunting a criminal lifestyle, lack of ability to adequately assess emerging conflict situations, do the right things to resolve them. That is why, according to the testimony of prison psychologists, to correct the majority (80 %) of convicts in the study group, it is necessary to use not only methods of persuasion, but also those containing elements of influence (coercion).

4. Characteristics of the circumstances of unlawful use of physical force and special means in relation to persons sentenced to deprivation of liberty.

An analysis of the circumstances of the illegal use of the considered force methods of influence in relation to those sentenced to imprisonment indicates that such cases occurred mainly under a strict regime (80 %) for men who were re-sentenced to actual imprisonment (80%). Physical force is most often used against such convicts (in 60 % of cases). Physical force and special means

combined were used in 30 % of cases, and only special means in 10 %.

In most cases (80 %), the illegality of the use of physical force and special means against convicted persons was manifested in the abuse of authority by the employees of the IU for such use, aimed at suppressing the criminal actions committed by convicted persons. In other cases (20%), this application is used without any reason for it. Misuse of physical force in the majority of cases (89 %) were implemented in order to prevent disobedience or resistance to legal requirements of the employee Yiwu, in other cases (11 %) this application was aimed at preventing attacks by prisoners on staff Yiwu, convicts and other persons attending these institutions. Misuse of detainees of special means in equal shares was connected with the attack sentenced to Yiwu staff, prisoners and other persons, and also physical resistance by prisoners to the staff of the correctional institution.

In half of the cases, the considered use of physical force and (or) special means against convicted persons was carried out in the residential area of the IU, 30 % – in a single cell – type room (EPCT), 20% - in a penal isolation cell. Most often (60 %) such use was carried out in the daytime (from 11.00 to 18.00), that is, during the greatest activity of convicts and the largest possible number of regime events. In the remaining 30 %, the considered application was carried out in the morning (from 6.00 to 11.00) and in a smaller number of cases in the evening (from 18.00 to 23.00).

Negative is the fact that in most cases (70 %) before the use of physical force and (or) special means to convicts were not applied non-forceful methods of suppression of acts committed by them, in the remaining 30% of cases, these methods were applied, but they did not ensure the suppression of acts committed by them.

In addition, in most cases (60%), the convicted persons were not warned about the use of physical force and / or special means against them, and they were not given enough time to stop their act. At the same time, it is a positive fact that in the vast majority of cases (90%), the employees of the IU provided the necessary medical assistance to the convicted persons against whom the illegal use in question was carried out.

5. Characteristics of employees of the IU who unlawfully used physical force and special means against persons sentenced to deprivation of liberty.

Generalization of the characteristics of employees of the law enforcement Agency who unlawfully used the studied force methods of influence against convicts allowed us to conclude that they are only men who are in adulthood, a large proportion of whom were persons aged 31-35 years (46.7%), 36-40 years (26.7 %). For the remaining age groups, these employees were distributed as follows: 21-25 years (13.4 %), 26-30 years (6.6%) and 41-45 years (6.6%).

These employees served in the penitentiary system for quite a long time: 26.7 % of them at the time of the Commission of the illegal use in question worked in this system from 4 to 6 years, the same number – from 13 to 15 years, every fifth-from 10 to 12 years.

Security in places of deprivation of liberty is provided by an employee of operational-regime units. That is why it was not accidental that the majority of employees working in the security and operational departments (60 % and 13.4%, respectively) were unlawfully used force methods against convicted persons.

Also, the majority (60 %) of them had a higher legal education, which is very strange, since, as a rule, persons with such education have a high level of legal awareness and legal

culture. 26 % of these employees had only secondary professional education. The remaining 14 % had a higher technical education. Only 13.3% of such employees received higher education in an educational organization belonging to the Federal penitentiary service of Russia. Every fifth person received a higher education in an educational organization belonging to the Ministry of internal Affairs of Russia.

2/3 of these employees had experience of family relations and were divorced, one in five did not have such relationships, and only almost one in ten was married, which is a very negative circumstance that should be paid attention to, since social loneliness to a certain extent reduces the level of personal responsibility of an individual for their actions [8, 9].

The majority (42 %) of these employees had no disciplinary sanctions during their service, while 36.8% had only incentives. Only 21.2% of these employees were disciplined. This indicates that in most cases these employees sought to show positive activity in the performance of their official duties and not violate the conditions of service established by law, in particular those related to the use of force against convicted persons.

The system makes it a rule to strictly comply with the regulatory requirement to conduct checks on the professional fitness of employees of the IU to act in situations involving the use of physical force and special means. In practice, these checks are carried out systematically, from which it can be concluded that the illegality of such use is most likely due to the so-called "human factor", which has a psychological component.

A study of the psychological characteristics of these employees showed that they are mostly characterized by positive qualities than negative ones. Among the positive ones, prison psychologists indicated

the ability to self-control, loyalty to the interests of the service, authority among colleagues and convicts, the ability to restrain themselves, sociability, stress resistance and self-control, an adequate perception of the surrounding reality, and the ability to find a compromise in conflict situations.

6. Characteristics of the reasons and conditions for the unlawful use of physical force and special means in relation to persons sentenced to deprivation of liberty.

Understanding the causes of criminal behavior helps to better understand the nature of illegal behavior of a criminal nature, to develop the most effective measures for its prevention [10, p. 345-346].

In order to determine the reasons for misuse in relation to persons convicted to deprivation of freedom, physical strength, and (or) special means identifying the most important of them to develop further in the most optimal directions for their prevention, and measures to implement these policies, employees serving in IU, where has taken place the details of the application were asked to specify these reasons.

7. Prevention of unlawful use of physical force and special means in relation to persons sentenced to deprivation of liberty.

Prevention of the considered illegal use should be based on a clear and objective understanding of the reasons and conditions for its implementation, an idea of the persons who committed it, and the victims (convicted) of such treatment.

The implementation of this prevention should be based on the principles of legality, justice and transparency, which is why it is necessary to develop an approach to eliminating the negative phenomenon under consideration in the domestic penitentiary practice, according to which no case of unlawful

use of physical force and special means against those sentenced to imprisonment was hidden, and those responsible for such use should be brought to justice.

The probability of this can be achieved the maximum possible openness in the functioning of UIS for the state and society, which is defined as one of the important characteristics of this system the Concept of development criminally-Executive system of the Russian Federation until 2020 .

In our opinion, the effectiveness of the prevention of the illegal use in question is determined by the implementation of the following measures:

carrying out work on suppression of the facts of concealment of illegal use of force methods by employees of the IU in relation to convicted persons committed unlawfully;

identification and detailed study of all causes and conditions, circumstances of unlawful use of physical force and special means in relation to those sentenced to deprivation of liberty, with the development of measures to prevent such use in the future, taking into account the conditions of operation of a particular IU;

improving the quality of training and retraining of qualified employees for the UIS who are able to perform their duties at a highly professional level;

carrying out work on improving and maintaining a positive moral and psychological climate in the staff of the IU;

prevention of employees ' involvement in destructive social practices (violation of the law and established rules of behavior in society, alcohol consumption, leading an immoral lifestyle, etc.) [15, p. 37];

development of the Institute of mentoring, assistance in solving emerging family and household problems of employees of the Institute;

development of measures to encourage

employees to perform their duties at the proper level and, at the same time, to increase the demands on the results of their work;

improving the quality of in-system inspections of the activities of employees of the IU related to the use of physical force and special means, while considering the possibilities of interdepartmental interaction in this matter [16, p. 97];

целенаправ purposeful work with persons serving a prison sentence to convince them of the appropriateness of the correct, standard-defined style of communication with employees of the IU, the importance of their compliance with the legal requirements of these employees, and the inadmissibility of violating the requirements of the established procedure and conditions for serving a sentence.

8. Conclusions

Illegal use of physical force and (or) special means was carried out against convicted persons with sufficiently negative characteristics, characterized by a high degree of criminal infection, destructive moral and psychological qualities that show a negative attitude to the order and conditions of serving a sentence that do not comply with the legal requirements of the employees of the IU.

The generalization of personal characteristics of employees of the law enforcement Agency who unlawfully used the considered force methods of influence against persons serving imprisonment indicates that in most cases such employees differ in positive qualities. These are men of Mature age who have sufficient experience of working in the institutions of UIS, the necessary professional skills, and have a sufficient level of education to lead a law-abiding lifestyle, which is why they strive to follow the regulations governing the professional activities of a UIS employee, and show positive activity in the performance of

their official duties. Such employees are characterized by positive psychological qualities that generally correspond to their professional aptitude.

The most likely reasons for the illegal use of force against convicted persons are related to the nature of illegal activity and various provocations on their part, as well as to the negative features of service due to the specifics of places of deprivation of liberty.

The measures outlined in this paper to prevent this negative phenomenon in the domestic penitentiary practice can have a positive impact on improving the level of functioning of the UIS, which corresponds to the regulatory requirements of the national and international levels.

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INFORMATION ABOUT AUTHOR

Alexander M. Smirnov – Doctor of Law, Associate Professor, Chief Researcher, Research Center-2
Research Institute of the Federal Penitentiary Service of Russia
15a/1, Narvskaya ul., Moscow, 125212, Russia E-mail: samnauka@mail.ru
RSCI SPIN code: 1481-6590
ORCID: 0000-0003-4779-4971
ResearcherID: M-8979-2018

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