

CONVICTS' LABOUR IN RUSSIAN PENITENTIARY PRACTICE OF THE 17th – 18th CENTURIES: FROM PUNISHMENT TO CORRECTION REMEDY

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Abstract: *The results of historical and legal research of the key characteristics of Russia's penitentiary policy in the sphere of convicted criminals' labour organization in the 17th – 18th centuries are presented in the article. As an information base were used original texts of Russian legal acts of the researched historical period. Also, were used science works of historians and legal scholars starting from the first half of the 19th century. The study determines the influence of the Church on the processes of law-making, execution of criminal penalties and convicts' labour organization in the early middle ages, as well as the impact of this stage on the formation of Russian penitentiary system in the studied historical period. The features of the influence of foreign legislation on the Russian penitentiary law-making and reception processes of the Byzantine legislation in the legal system, as well as the legislation of European countries, were determined. The article analyses the initial stage of the formation of a unified penitentiary system associated with the emergence of codified legal sources and a centralized system of public administration. Features of convict's attraction to labour as well as organizational aspects of penitentiary systems' functioning were investigated. The socio-economic conditions that determined the directions of development of Russia's criminal and penitentiary legislation of the studied historical period were analysed.*

Keywords: *convicts' labour, penitential, punishment, prison system, criminal legislation, Russian State*

Rezumat: *Munca deținuților în practica penitenciară rusă din secolele XVII – XVIII: de la pedeapsă la instrument de corecție.* Articolul prezintă rezultatele cercetării istorice și juridice a principalelor aspecte ale politicii penitenciare a Rusiei în secolele XVII-XVIII în domeniul organizării muncii criminalilor condamnați. Ca bază de informare au fost folosite textele originale ale actelor juridice rusești din respectiva perioadă istorică. De asemenea, au fost folosite lucrări științifice ale istoricilor și cercetătorilor juriști începând cu prima jumătate a secolului al XIX-lea. Studiul reflectă influența Bisericii asupra proceselor de elaborare a legislației, executării pedepsei penale și organizării muncii condamnaților

în Evul Mediu, precum și impactul acestei etape asupra formării sistemului penitenciar rus în perioada studiată. Autorii definesc particularitățile influenței legislației străine asupra proceselor juridice și ale receptării legislației bizantine în sistemul juridic rus, precum și ale impactului legislației țărilor europene. Articolul analizează etapa inițială a formării unui sistem penitenciar unificat asociat cu apariția unor surse legale codificate și a unui sistem centralizat de administrație publică. Sunt investigate specificul determinării condamnatului de a munci, precum și aspectele organizatorice ale funcționării sistemului penitenciar. Sunt analizate condițiile socio-economice care au jalonat direcțiile de dezvoltare a legislației penale și penitenciare a Rusiei în perioada istorică studiată.

Résumé : Le travail des condamnés dans l'exercice pénitentiaire en Russie du XVII-e au XVIII-e siècles : de la punition à l'instrument de correction. Les résultats des recherches historiques et juridiques sur les caractéristiques essentielles de la politique pénitentiaire de la Russie dans le domaine de l'organisation du travail des criminels condamnés des XVII-e au XVIII-e siècles sont présentés dans l'article ci-joint. Les textes originaux des actes juridiques russes de la période historique étudiée ont été utilisés comme base d'information. Des travaux scientifiques d'historiens et de juristes ont également été utilisés à partir de la première moitié du XIX-e siècle. L'étude détermine l'influence de l'Église sur le processus législatif, l'application des sanctions pénales et l'organisation du travail des condamnés pendant le Moyen Âge, ainsi que l'impact de cette étape sur la formation du système pénitentiaire russe dans le contexte historique étudié. Les caractéristiques de l'influence de la législation étrangère sur les processus d'élaboration de la législation pénitentiaire russe et de la réception de la législation byzantine dans le système juridique, ainsi que de la législation des pays européens, y ont été déterminées. L'article analyse l'étape initiale de la formation d'un système pénitentiaire unifié associé à l'émergence de sources juridiques codifiées et d'un système d'administration publique centralisé. Les caractéristiques de la détermination du condamné pour le travail, ainsi que les aspects organisationnels du fonctionnement du système pénitentiaire y ont été examinés. Les conditions socio-économiques qui ont déterminé les orientations du développement de la législation pénale et pénitentiaire de la Russie de la période historique étudiée y ont été analysées.

INTRODUCTION

Modern penitentiary science defines convicts' labour as a correcting remedy for criminals. This doctrine is reflected in the regulations of most developed countries. In European countries with highly developed economy, this doctrine is enhanced nowadays and vocational training is defined as a correcting remedy. In France and Austria, participation in vocational training programs is

defined as the work activity of prisoners for which they are entitled to get appropriate remuneration.¹

For a long time, the work of convicted criminals in the penitentiary practice of many countries performed exclusively compensatory functions and had the character of punishment, which was defined corresponding to the level of public danger of the committed crime. However, the processes of humanization of the penitentiary legislation and the relevant law enforcement practice have changed the emphasis in the use of labour as a correcting remedy related to the execution of basic punishments. The transition of convicts' labour from punishment to remedy took place in different countries during a long period. In Western Europe this process took over 400 years (15th-19th centuries) and had significant national differences.²

From this point of view penitentiary practice of the Russian state in the 17th-18th centuries deserves special attention. In this historical period, during a very short time (over 150 years) the formation of the Russian prison system took its place, and applicable legal norms and practices were in the progress of rapid development. The study of processes of the convicts' labour nature changing and its functions in the Russian penitentiary practice makes it possible to study the processes of humanization of the researched correctional system.

The relevance of the research of convicted criminals' labour organization in Russia in the 17th – 18th centuries, as well as the processes of formation of penitentiary policy in this area, is determined by the peculiarities of this historical period. The legal regulation of the execution of punishments related with the employment of convicted criminals had a system-forming nature and served as the basis of the criminal law and penitentiary policy of that period. At the same time, the studied historical period was associated with the intensive formation of Russia's legal system and the reform of its public administration system. The consolidation of state power by the Romanov dynasty and the beginning of state-building processes were accompanied by significant reforms. Formation of a new social structure of Russian society took place in that time. In these circumstances,

¹ Jo Hawley, Ilona Murphy, Manuel Souto-Otero, *Prison Education and Training in Europe: Current State-of-Play and Challenges*. A summary report authored for the European Commission by GHK Consulting. May, 2013, passim, in <http://klasbak.net/doc/EC.pdf> (Accessed on 30.11.2018).

² Henry Theodore Jackson, *Prison Labor*, in "Journal of the American Institute of Criminal Law and Criminology", Vol. 18, 1927-1928, No. 2, pp. 219-225, <https://scholarlycommons.law.northwestern.edu/cgi/viewcontent.cgi?article=2059&context=jclc> (Accessed on 21.07.2018).

state penitentiary policy gained a great importance, which revealed in its significant impact on social, economic, military and political processes in Russian society. The reformatory activity of Peter the great also greatly affected the penitentiary functions of the state. On the one hand, these reforms were aimed at the modernization of all spheres of public life (including the legal status of prisoners), on the other hand, the modernized penitentiary policy was partially aimed at servicing economic, social and military reforms in Russia.

In the 18th century, the Russian Empire significantly expanded its territory. The country included vast territories, which provided a significant expansion of the national population, as well as complicated the class structure of society. These and other circumstances determined the significant development of domestic law, including legislation governing the execution of criminal penalties. As the self-government rights in the newly annexed territories expanded, the Russian penitentiary policy began to acquire an Imperial character. The legal system of the metropolis was enriched by law innovations applied in the Western territories (where some legal norms of a number of European countries were largely accepted). At the same time, legal systems of modern Eastern European countries in the researched period acquired a holistic character and passed an intensive stage of system formation.

Historical and legal study of the processes of formation and development of the Russian penitentiary policy in the sphere of labour organization of convicted criminals in the 17th – 18th centuries are essential from the point of view of the analysis of legal systems' formation processes of modern countries of Eastern Europe.

The relevance of the research of the Russian penitentiary policy in 17th – 18th centuries was determined in the work of Isabel de Madariaga, where she noted that "... so little had been written in English on the bare facts of Russian eighteen-century penal policy...". It was also noted that "...a full history of penal policy, in theory and in practice, in eighteenth-century Russia remains to be written".³ Study of Russian Prison System history, carried out by A.S. Mikhlin and R.D. King, outlines, that no systematic English-written analysis was made on the topic of implementation of sentences in Russia before the 19th century⁴.

³ Isabel de Madariaga, *Politics and Culture in Eighteenth-Century Russia: Collected Essays*, London, Routledge, 1998, p. 10.

⁴ A. S. Mikhlin, R. D. King, *The Russian Prison System: Past, Present and Future*, in R. Matthews, P. Francis (eds), *Prisons 2000*, London, Palgrave Macmillan, DOI: https://doi.org/10.1007/978-1-349-24559-8_12

Methodology of our research in general grounds on the ideas of N. Lacey, D. Soskice and D. Hope. In their work they insist on such position "...four main explanatory paradigms of penal policy – focus on, in turn, crime, cultural dynamics, economic structures and interests, and institutional differences in the organization of different political economies as the key determinants of penal policy. We argue that these paradigms are best seen as complementary rather than competitive and present a case for integrating them analytically in a comparative political economy framework situated within the longue durée of technology regime change."⁵ We fully agree with gentlemen and due to this we focused our attention on a wide range of corresponding historical spheres that determined the features of Russian penal policy in the researched historical period.

The aim of the research is to identify the prerequisites for the formation of Russia's penitentiary policy in the sphere of convicted criminals' labour organization in the 17th – 18th centuries, as well as its impact on the processes of state construction and development of the legal system of the Russian Empire. Achieving the aim of the study is determined by the systematic use of a number of methods of scientific research. This paper is also aimed on the objective analysis of the prerequisites of the Russian penal policy forming. Hypothesis of such analysis assume that a widely spread opinion,⁶ that political repression played a tremendous role in the history of Russian penal policy, is a mistake. During the preparation of the article were used narratives, comparative legal, historical and genetic methods of science research, besides a number of general scientific research methods were used.

CLASSIC MIDDLE AGE ERA

Analysis of scientific literature in the sphere of history of state and law of Russia gives us opportunity to conclude that the use of forced labour of criminal

⁵ N. Lacey, D. Soskice, D. Hope, *Understanding the Determinants of Penal Policy: Crime, Culture, and Comparative Political Economy*, in "Annual Review of Criminology", 2018, Vol. 1, p. 195.

⁶ B. Gruszczynska, E. Kaczynska, *Poles in the Russian Penal System and Siberia as a Penal Colony (1815-1914): A Quantitative Examination*, in "Quantification and Criminal Justice History in International Perspective", 1990, Vol. 15, No. 4 (56), p. 95-120; Peter H. Solomon, Jr., *Soviet Penal Policy, 1917-1934: A Reinterpretation*, in "Slavic Review", 1980, Vol. 39, No. 2. p. 195-217; M. Raef, *The well-ordered Police State. Social and institutional change through law in the Germanies and Russia, 1600 – 1800*, New Heaven University, 1983.

convicts occurred throughout the period of the Russian state existence. In spite of the fact that in all editions of the *Russkaya Pravda* (Old Slavic: Правда Русьская. Eng.: Russian Truth. The first legal code of the Eastern Slavs⁷) there are no mentions of such punishments as restriction and imprisonment, Russian historiography specifies existence of practice of people maintenance in earth prisons as a kind of punishment. Such criminal sanction also included forced labour of convicts. Academician S. M. Soloviev qualified this phenomenon as slave labour.⁸

The first mention of the imprisonment places in the Russian state refers to the 10th – 12th centuries *Chronicles of Nikon* (rus.: *Никоновская летопись*) and *Lavrentiy* (rus.: *Лаврентьевская летопись*) provide us information about the detention of the heretics in the dungeons and cellars of the Episcopal houses. Criminals were imprisoned not only in monasteries and bishops' houses. Often violators of the law were placed in monastic deserts and monasteries under protection of brotherhood.⁹

In our opinion, it is worth disagreeing with the opinion of S. Stefanov,¹⁰ that in the historical and legal aspect the use of labour of citizens convicted in criminal offenses can be analysed only since the 17th century, when appeared the first legal sources regulating the work of convicts in Russia. Progressive for its time was the legislation of the Grand Duchy of Lithuania, where on the basis of *Russkaya Pravda*, Polish court codes and the laws of other European States, were allocated penitentiary functions of the state. In the Statute of the Grand Duchy of Lithuania from 1588¹¹ criminal penalties such as imprisonment and forced labour were

⁷ Robert E. Bjork (Editor), *The Oxford Dictionary of the Middle Ages*, vol. 4, Oxford, Oxford University Press, 2010.

⁸ С. М. Соловьев, *Сочинения* [Works]: В 18 кн. Кн.1: *История России с древнейших времен* [History of Russia since ancient times]. Т.1–2, Москва. Голос, 1993.

⁹ М. А. Колчин, *Ссылные и заточенные в острог Соловецкого монастыря в XVI – XIX вв.* [Exiled and imprisoned in the jail of the Solovetsky monastery in 16th – 19th centuries], Москва, Посредника, 1908; А. С. Пругавин, *Монастырские тюрьмы в борьбе с сектантством: к вопросу о веротерпимости* [Monastery prisons in the struggle against sectarianism: the question of religious tolerance], Москва, Посредника, 1905.

¹⁰ С. О. Стефанов, *Праця як міра карального впливу при виконанні карних покарань в історії Української держави (період до 1900 з.)* [Labour as a punitive measure impact at execution of criminal sanctions in the history of the Ukrainian state (before 1900)], in *Актуальні проблеми політики: зб. наук. праць* [Actual issues of the politics: collection of scientific works], Одеса: Юридична література, 2000, Вип. 9, с. 431-437.

¹¹ *Статут Вялікага княства Літоўскага 1588* [Statute of Grand Duchy of Lithuania]: Тэксты. Давед. Камент, Минск, БелСЭ, 1989.

provided as a punishment and a correction mean for offenders. The Statute provided norms for the detention of convicts in prisons with differentiated conditions, depending on the category to which the offender was assigned.¹²

In the work of N. I. Naryshkina¹³ it is pointed out that in the basis of the criminal and penitentiary legislation of the Russian state and the Grand Duchy of Lithuania in the 15th-17th centuries were many common provisions, but the involvement of convicts to forced labour in Lithuania started earlier, while in Russia it became widespread only in the 18th century. It is noteworthy that in the Grand Duchy of Lithuania, during the analysed period, codified sources of criminal and penitentiary law were developed. New codifications contained a lot of progressive provisions for that time, such as pardon, compensation for convicts, conditions of detention and food provision of prisoners. At this time, in the Russian state, the execution of criminal penalties was regulated by Prince's (later Czar's) decrees, orders, certificates and other acts, which largely contained only prohibitions, duties and regulations. The convicts of that time had practically no rights in Russia.

CONCILIAR CODE 1649

The Conciliar code adopted in 1649 became the first codified source of criminal law in Russia¹⁴ (hereinafter the Code of 1649), where deprivation of liberty in prison was provided as a sanction in more than 40 articles. Thus, deprivation of liberty, depending on the severity of the crime, had an indefinite term or limited duration. Sources of the Code of 1649 were: Rules of the Holy

¹² О. І. Андрущак, *Праця як засіб виправлення і виховання засуджених (історико-правовий нарис)* [Labour, as the way of correcting the convicts (historical and juridical essay)], in "Юридична Україна" [Juridical Ukraine], 2011, № 6, с. 17-21; Ж. В. Хацук, *История развития экспертизы в судопроизводстве* [History of development of expertise in legal proceedings], in "Вестник Гродненского государственного университета им. Я. Купалы" [Bulletin of Grodno state University n. a. Kupala], 2015, № 1(87), с. 94 – 103.

¹³ Н. И. Нарышкина, *Функционирование тюрем в Российском государстве и Великом княжестве Литовском в XV–XVII вв.: сравнительно-правовое исследование* [The functioning of prisons in the Russian state and the Grand Duchy of Lithuania in the 15th – 17th centuries: comparative legal research], in "Вестник Института: преступление, наказание, исправление" [Bulletin of the Institute: crime, punishment, correction], 2012, № 4(20), с. 22 – 25.

¹⁴ *Sobornoe ulozhenie ot 29 janvarja 1649 g.* [Conciliar code, dated 29 January 1649], in <http://base.garant.ru/57791500/> (Accessed on 12.08.2018)

Fathers and Apostles; Town laws of the Byzantine Emperors; court laws adopted in 1497, 1550, 1589, the decrees of kings and knights' sentences; Lithuanian Statute; statutory (decree) books of the Violent order.¹⁵

Violent order – one of the governing bodies of The Russian state in 16th-17th centuries. Government officials from nobility, who were required to solve criminal cases have been mentioned in Russian normative acts since 1539. Presumably, it was a temporary Commission established to prevent robbery, which then intensified. Later, the temporary Commission became permanent, and thus was established the Robbery order, which was first mentioned in 1571 and continuously operated until the 18th century.¹⁶

This gives us the opportunity to conclude that in the Code of 1649 was made the reception of a number of Byzantine law rules, which can be explained by the prolonged influence of Byzantine culture on the development of the Russian state. At the same time, early national legal sources and developments of European States were widely used.

For the Commission of property crimes with selfish intent, imprisonment with compulsory work for the state interest was provided. Work in the vast majority of cases took place outside the places of detention. According to the Code of 1649 forced labour had the character of additional punishment. Articles 9, 10, 11, 15, 16 prescribed the direction of thieves and robbers to "...all sorts of production where the Emperor will indicate" after imprisonment.¹⁷ Places of organization of these works were usually Siberia or border towns in the South.

¹⁵ К. А. Долгополов, *Историко-правовые тенденции развития наказания в российском уголовном праве* [Historical and legal trends in the development of punishment in the Russian criminal law], in "Вестник Северокавказского государственного технического университета" [Bulletin of the North Caucasian state technical University], 2011. №3 (28) С. 201 – 203; А. А. Кулешов, *Становление тюремной системы: отечественный и зарубежный опыт* [Formation of the prison system: domestic and foreign experience], in Матер. междунар. науч.-практ. конф. *Уголовно-исполнительная система России: проблемы и перспективы* [Penitentiary system of Russia: problems and prospects] (г. Самара, 22.05.2015 г.). – Самара : Самарский юрид. инст. ФСИН, 2015. – С. 152 – 155; Е. Н. Леонтьева, *Система источников русского права XVII в.* [The system of sources of Russian law of the 17th century], Чебоксары, ЧКИ РУК, 2009

¹⁶ К. А. Неволин, *Образование управления в России от Иоанна III до Петра Великого* [Establishment of public administration in Russia from John III to Peter the Great], in "Журнал Министерства народного просвещения" [Journal of the Ministry of Public Education], 1844, № 1, с. 25 – 31.

¹⁷ В. А. Крымов, *Предпосылки становления процессуального порядка начала*

It should be noted that the researchers note the extreme severity and repression of the Code of 1649, where the death penalty was provided in more than 60 kinds of cases. The Code envisaged violent punishments, distinguished by extreme cruelty.¹⁸ A widely spread phenomenon in the 17th century was serving a criminal sentence (including life imprisonment) in monasteries. Herewith, the process of serving the sentence was regulated by Church acts. This also applies to the organization of convicts' labour. Adopted on the 26th of December 1697 "Instructions to clerical elders or decent overseers from his Holiness Moscow Patriarch Adrian", regulated relations in the sphere of serving a life sentence. This Act determined that civilians' convicts of should be put in shackles and must carry out "the work which fit them".¹⁹ At the same time, correspondence and communication with the outside world were prohibited, the possibility of going outside the prison was excluded, regular educational work in the form of religious exhortations was to be carried out, and severe supervision in the form of a guard was provided.²⁰

THE PETER THE GREAT ERA

As already noted, the convicts' labour in the pre-Peter the Great era was an episodic phenomenon and was not widespread. During the reign of Peter the Great started the active use of convicts' labour for the purpose of obtaining material benefit by the state. Convicted for crimes were sent to exile (the place of

производства по уголовному делу в российском законодательстве XI-XVII вв [Preconditions for establishment the procedural order for initiation of proceedings in a criminal case in the Russian legislation of the 11th-17th centuries], in "Вестник Института: преступление, наказание, исправление" [Bulletin of the Institute: crime, punishment, correction], 2018, № 1(41), с. 82 – 87.

¹⁸ В. Строев, *Историко-юридическое исследование Уложения изданного царем Алексеем Михайловичем в 1649 году* [Historical and legal research of the Code published by Tsar Alexei Mikhailovich in 1649], Санкт-Петербург, Тип. Имп. Акад. наук, 1833.

¹⁹ Н. И. Нарышкина, *Правовое регулирование тюремного заключения в России во второй половине XVII века* [Legal regulation of imprisonment in Russia in the second half of 17th century], in "Уголовно-исполнительное право" [Penal Law], 2012, № 1(13), с. 29 – 32.

²⁰ С. Ю. Ведров, Д. В. Углицких, *Осуществление надзора за лицами, отбывающими пожизненное заключение в Российском государстве с XII и до начала XX вв. (историко-правовые аспекты)* [Supervision of persons serving life imprisonment in the Russian state from the 12th to the beginning of the 20th centuries (historical and legal aspects)], in "Вестник института" [Bulletin of the Institute], 2008, №4, с. 79 – 82.

penal servitude), where their work was used free of charge. Deprivation of liberty for convicts, sentenced for penal servitude, could be appointed for a definite term or for life. It is noteworthy that in addition to the servitude of convicted men (construction, mining, the first plants' building), women's labour was also used. Women guilty for crimes worked in specially created spinning houses.²¹

Note that Peter the Great created not only the system of exile on penal servitude, which existed with certain changes for about 200 years. Innovation was in the construction of prisons near the factories and plants. In some cases, enterprises were conjunct with penitentiary institution and formed a single complex of corrective labour (production and prison complex). To prisons were sent people "of inappropriate and irreverent behaviour, whom no one wants to hire, who are lazy, healthy, poor and bacchanal. Who don't want to work for themselves feeding and eat bread in vain."²²

In the early period of the reign of Peter the Great one of the main places of convicts' exile was Azov, and the first mention about the convicts' direction for the execution of criminal penalties there contained in the Royal Decree "On the punishment of the townspeople in exchange for bribes with the chosen people to the tavern customs or duties" (1699).²³ It is noteworthy that penal servitude became the main sanction in the fight against crimes related to corruption at that time. It should also be noted that in Peter's times work at shipyards in port cities was considered as a kind of penal servitude, while work at mines and factories in Siberia was not considered as penal servitude. Therefore, penal servitude at the port shipyards often passed into the Siberian exile to mines, salt factories and mining plants. It can be explained by the great significance of the shipbuilding branch, which was determined by the content of Peter's military and economy reform. In this case, economic imperatives were more important than state law enforcement and correctional functions.

Despite the high level of repressiveness of criminal law in Peter's the Great times, which had been preserved from the time of the Code of 1649 adoption,

²¹ B. Clements, B. A. Engel, C. D. Worobec (eds.), *Russia's Women: Accommodation, Resistance, Transformation*, Berkeley, University of California Press, 1991.

²² М. В. Бебякин, *Эволюция благотворительных обществ для помощи осужденным в Российской Империи* [Evolution of charitable societies for the help for prisoners in the Russian Empire], in "Человек: преступление и наказание" [Man: crime and punishment], 2016, № 1, с. 44 – 48.

²³ *Российское законодательство X–XX вв.* В 9-х т. Т. 6. *Законодательство периода становления абсолютизма* [The Russian legislation of 10th -20th centuries, 9 vol., vol. 6, Legislation of the period of formation of absolutism], Москва, Юрид. лит., 1988.

humanization of criminal proceedings was initiated during the reign of this monarch. Peter's the Great reforms manifested in reducing the level of criminal sanctions' repressiveness. A significant number of crimes have ceased to be punished by death or torture, and have been replaced by exile and penal servitude. At the same time, in the criminal law of the Petrine era there is a prototype of correctional labour, when the town officials for the improper performance of their duties, petty theft and bribery were sent to exile on remote areas to perform the same tasks that they were engaged in before the criminal conviction.²⁴

PEAK OF THE ABSOLUTISM ERA

In the work of N. D. Sergievskiy on this issue was indicated that the "In the old Russia non-productive exile almost wasn't applied. Exiled for public or military service, to outskirts or for agricultural works after arrival immediately were sent into action: ploughing, forest cutting, building. Convicted officials were exiled for the same work they acted before sentencing. Exiled people were given land and a loan for horse purchase and for any village inventory. Only in rare cases of disfavour exiled convicts were imprisoned at the place of exile."²⁵ At the same time A. P. Solomon noted that "the Moscow government treated the exiles with great favour and was alien to any contempt for them, not considering them as rejected, what they were considered in that time; labour of the exiled convicts, according to the view of the that period, was a kind of public service, legal status of the exiles was defined as a rank."²⁶

There is a noteworthy collection of norms of feudal law of the first half of the 18th century, which were in force on the left Bank Ukraine, which was adopted in 1743 and was called "the Law for litigation of people from Malorossia."²⁷

²⁴ N. Kollmann, *Crime and Punishment in Early Modern Russia*, Cambridge, Cambridge University Press, 2012

²⁵ Н. Д. Сергеевский, *Наказание в русском праве XVII века* [Punishment in Russian law of the 17th century], Санкт-Петербург, А. Ф. Цинзерлинг, 1887.

²⁶ А. П. Соломон, *Ссылка в Сибирь: очерк ее истории и современного положения: для Высочайше учрежденной комиссии о мероприятиях по отмене ссылки* [Exile to Siberia: an essay on its history and present situation: for his Majesty's established Commission on the activities for the abolition of exile], Санкт-Петербург. тип. С.-Петербург. тюрьмы, 1900.

²⁷ *Права, по которым судится малороссийский народ* [The Law for litigation of people from Malorossia], высочайшим всепресветлейшия, державнейшия великия государыни императрицы Елисавет Петровны, самодержицы всероссийския, ее

Articles 22 and 23 of these Law directly described the issues of prisons' establishment and facilities construction. Conditions of prisoners' detention, their receipt of prison payment (collected after release from the prisoner at the expense of the money earned during the serving of sentence).²⁸

A significant expansion of the scope of penal servitude for convicts occurred on the 17th January 1765 with the adoption by Catherine II "Decree on granting landlords the right to send peasants to penal servitude".²⁹ Hereinafter, the decree acquired the force of law, and powers of the landlords to send their serf peasant on penal servitude substantially expanded. Serf peasant could be sent on penal servitude for disobedience to his landowner, thus the measure of such disobedience was defined by the landowner himself. At the same time, there were some restrictions on the age and health of convicts, sentenced to penal servitude. They had to be younger than 45 years old, physically and healthy able to work. It is noteworthy that at the first request of the landowner, the convict could be returned back to his disposal.³⁰ The decree of 1765 did not regulate the process of organization of convicts' hard labour, but it deserves attention as the first source of law in Russia, clearly indicating the use of forced labour as a kind of a criminal punishment.

Among the penitentiary innovations adopted under Catherine the Great should also be noted punishment for intentional crimes against the property of citizens. In 1781 was adopted by the Nominal decree "About the court and the punishments for theft of different types and the establishment of work houses in all the Provinces."³¹ Those guilty in theft were sentenced to detention in

императорского священнейшего величества повелением: из трех книг, а именно: Статута литовского, Зерцала саксонского и приложенных при том двух прав, также из Книги порядка, по переводе из полского и латинского языков на российский диалект в едину книгу сведенные, в граде Глухове, лета от рождества Христова 1743 года / под ред. А. Ф. Кистяковского, Киев, Унив. тип. (И. И. Завадзского), 1879.

²⁸ О. Е. Кутафин, *Российская автономия* [Russian autonomy], Москва, Проспект, 2008.

²⁹ Д. Тараторин, *Русский бунт навеки. 500 лет гражданской войны* [Russian rebellion forever. 500 years of civil war], Москва, Litres, 2016.

³⁰ J. Ohlin, *Criminal Law: Doctrine, Application, and Practice*, Alphen aan den Rijn, Wolters Kluwer, 2012

³¹ *Именной указ от 03.04.1781 г., данный Сенату "О суде и наказаниях за воровство разных родов и о заведении рабочих домов во всех Губерниях"* [Personal decree of 03.04.1781, given to the Senate "On the court and penalties for theft of different kinds and the establishment of working houses in all Provinces"], in <http://base.garant.ru/58105240/#ixzz4HfhKYQfz> (Accessed on 12.08.2018)

workhouses, where they worked for the benefit of the state.³²

Issues of organization and regime of convicts' labour still remained unresolved in the Decree of 1781, but it contained a number of fundamental innovations for that time.³³ The decree introduced a system of sanctions for theft of property and recurrence of the crime. For theft of property in the amount of less than 20 rubles, it was provided to send the offender to the workhouse where he had to work until he reimburses the cost of the stolen and a fine of 6% of the amount of damage. The recurrence of this crime involved doubling the fine (the second part of which was sent to the income of the workhouse) and two lashes. Repeated relapse was punished by a triple fine (two-thirds of the fine went to the income of the workhouse) and three lashes. It should be noted that there was another kind of work houses, which were created in 1775 on the basis of art. 390 of "Institutions for the management of provinces."³⁴ However, in this type of workhouses operated not for criminals' detention. They served for persons incapable for independent work to provide feeding themselves. It is worth to note that in some science works these two types of workhouses were mixed.³⁵

The personnel policy in the selection of employees for workhouses is also notable. In the "Institutions for the management of provinces" stated, that on service should accepted: "decent guards, honest people and other necessary

³² *Ibid.*

³³ Г. О. Бабкова, *Уголовно-процессуальные законопроекты Екатерины и российское законодательство второй половины XVIII в. (к истории указа «О трех родах воровства» 1781 г. и «Устава благочиния» 1782 г.)* [Ekaterina's criminal procedural bills and the Russian legislation of the second half of the 18th century (to the history of the decree "On three kinds of theft" of 1781 and "The Charter of the deanery" of 1782)], in "Актуальные проблемы российского права" [Actual problems of the Russian law], 2015, № 2(51), с. 9 – 20.

³⁴ *Благочестивейшая самодержавнейшая великая государыня императрицы Екатерины Вторья учреждения для управления губерний Всероссийския империи* [Institutions for the management of provinces] (07.11.1775), in <http://constitution.garant.ru/history/act1600-1918/2350/> (Accessed on 12.08.2018)

³⁵ О. М. Григор'ев, *Історіографія розвитку пенітенціарної системи і законодавства України (до 1917 г.)* [Historiography of the prison system and the legislation of Ukraine (before 1917)], in "Ученые записки ТНУ им. Вернадского. – Серия «Юридические науки»" [Scientific notes of TNU "Vernadsky". - Series «Juridical sciences»], 2009, №. 1, Т.22, с. 36-39; Ю. И. Скуратов, Л. В. Глазкова, Н. С. Грудинин, А. А. Незнамова, *Развитие организованной преступности в России: системный анализ* [The development of organized crime in Russia: a system analysis], in "Всероссийский криминологический журнал" [Russian journal of criminology], 2016, Т. 10, № 4, с. 638–648.

people for surveillance, avoiding all the frills.”³⁶

In parallel along with the legal institute of work houses took place the development of the institute of exile on penal servitude. Hard labour in exile was aimed at solving a number of economic, politic, military and demographic problems. Also, issues of providing labour for newly created enterprises and the settlement of sparsely populated territories of the Russian Empire had to be solved.

The legal regulation of penal servitude was to determine the places of exile and crimes, which identified for the convict branch, region or the territory of penal servitude. Regulated by law was the delivery of convicts to the places of serving sentences, their clothing and food. All questions of the organization of labour, including working hours and rest time, internal regulations and etc. were solved exclusively by the administration of places of imprisonment. The convicts worked at shipyards, mines and mining plants. Crimes against sexual integrity and sexual freedom of the person were punished by sending to galleys. It is noteworthy that sending to the galleys also punished “concealment of souls” in the census during the reign of Peter the Great.³⁷

An attempt to legally divide the types of penal servitude depending on the degree of public danger of the crime was carried out in the Decree of 1775, which identified three groups of prisoners. However, this innovation practically did not change the position of prisoners and the principles of differentiation in the execution of criminal penalties were reflected in the law enforcement policy of Russia much later.

The reform of the penitentiary system during the second half of the 18th century is connected with two normative documents, which have followed one after the other: “About the prisons’ facilities construction”(1773) and “Prison Regulations” (1788). A detailed analysis of these documents was carried out in the work of M.N. Gernet.³⁸ The project of Catherine the Great and the subsequent “Prison Regulations” are evaluated in the scientific literature as a result of the Empress’ fascination with the liberal ideas of Diderot, Voltaire, Jean Jacques Rousseau and other European thinkers of that time. Despite the progressiveness of the ideas put in the basis in these documents, much of what was stated in them

³⁶ N. Kollmann, *By Honor Bound: State and Society in Early Modern Russia*, New York, Cornell University Press, 1999.

³⁷ И. Я. Фойницкий, *Учение о наказании в связи с тюремоведением* [The doctrine of punishment in connection with prison studying], Санкт-Петербург, Типография Министерства путей Сообщения, 1889.

³⁸ М. Н. Гернет, *История царской тюрьмы* [The history of the Czarist prison], в 5 т., изд. 3, Москва, Госюриздат, т. 1 (1762 - 1825), 1960.

is not implemented until nowadays, and a significant number of important aspects of sentences' serving by convicts at that time remained unresolved. On this occasion M.N. Gernet pointed out the following: "this work (project of Catherine the Great "About the prisons' facilities construction") did not extend to such essential aspects of prison life as work and discipline. Education and upbringing were also let alone."³⁹

Some attention was paid to the issue of convicts' labour and its organization in places of deprivation of liberty in the work of N. D. Sergievsky "Punishment in Russian law of the 17th century".⁴⁰ Among the purposes of criminal punishment in the analysed work was allocated the reception of material benefits from the offender. According to N. D. Sergievsky, this reason explained the desire of the state to use forced labour of prisoners, which was considered in two varieties: work in prison and exile on penal servitude.⁴¹ A much greater spread of penal labour was caused by the needs of a growing Empire, which required to populate large areas and provide food and other goods to military garrisons on the outskirts. In the kind of outskirts were usually meant Territories of Western Siberia and Malorossia.

The development of criminal and penitentiary legislation of the studied historical period determined the formation of the Imperial legal policy aimed at the formation of local legal systems in the newly annexed territories. The first Malorossian legislation on the territory of modern Ukraine was formed during this process. This practice was further applied after the accession of the Kingdom of Poland and the Grand Duchy of Finland to the Russian Empire in the 19th century.

RESULTS

The analysis of the legal framework, as well as practice of convicted criminals' labour organization in Russia in the 17th – 18th centuries makes it possible to form a holistic view on the penal policy of the Russian state in the studied period. Results of the research determine positive historical experience and effective political and legal solutions, the essential relevance of which preserves in modern conditions. At the same time, the identification of negative experience and unsuccessful decisions requires consideration and taking into account during the development of modern penitentiary policy.

³⁹ *Ibid.*, p. 112.

⁴⁰ Н. Д. Сергеевский, *Наказание в русском праве XVII века* [Punishment in Russian Law of the 17th Century], Санкт-Петербург, А. Ф. Цинзерлинг, 1887.

⁴¹ *Ibid.*, p. 78.

Convicts' labour played a major role in the execution of criminal penalties in Russia. Labour was considered both as a mean of correction of criminal behaviour and as a way of the caused harm compensation. At the same time, the labour regime was actually the basis of the regime of serving the sentence. It is also noteworthy that labour has become the main form of criminal repression and has replaced a number of cruel medieval corporal punishments. Thus, the processes of convicts' labour organization had a significant impact on the processes of humanization of the Russian penitentiary policy of the 17th century. In the studied historical period two directions of development of penitentiary policy clearly traced. This reflected in the normative legal acts and law enforcement practice.

Penitentiary policy in the field of convicts' labour organization of the late 17th – mid 18th centuries was formed in the course of significant economic and political reforms of Peter the Great. The organization of convicts' labour was subject to the imperatives of the country's economic development. The penitentiary law had clearly expressed compensatory functions and was aimed at correction through compensation of material harm. The measure of criminal repression was largely determined by the nature of the crime and the peculiarities of the processes of labour organization at the priority objects of the state development. It should also be taken into account that criminal and penitentiary policy of the Russian state was poorly focused on the provision of class privileges. The legislation provided for a wide range of penalties for nobility and civil servants. Penalties for property crimes and corruption in considerable extent were punished by forced labour.⁴²

Further reforms of the penitentiary system were connected with the development of the second direction of the penitentiary policy in the sphere of labour organization. This direction was largely aimed at solving the problems of approximation of Russian penal law to modern European doctrines, as well as solving a number of domestic political problems associated with the strengthening of inter-class property and legal stratification. It should be noted that the formation of the second type of development of penitentiary policy in the heyday of absolutism did not have an objective economic basis and largely served the internal and foreign policy interests of the monarchy. The result was the accumulation of significant problems in the Russian society, which subsequently led to the need for a significant change in the penitentiary policy in the sphere of

⁴² M. Okenfuss, *The Rise and Fall of Latin Humanism in Early-Modern Russia. Pagan Authors, Ukrainians, and the Resiliency of Muscovy*, Leiden, E.J. Brill, 1995.

labour organization in the 19th century, which were largely in line with the large-scale social transformations of the middle-end of the century.

CONCLUSION

The results of the research give opportunity to formulate a conclusion about the significant impact of foreign legal traditions on domestic legislation regulating the processes of convicts' attraction to work in the 16th – 17th centuries. It is also notable the significant role of the Church, both in the execution of sentences and in the process of convicts' labour organization. Large-scale reforms that affected all spheres of public life in the initial period of the reign of Peter the Great had a significant impact on the organization of convicts' labour. Exactly, during this period, the unified system of bodies and institutions executing criminal punishments started it's forming. At the same time, the core basis for the creation of this system was the most important objects of construction and industrial development. The prototype of the modern penal system was formed in the period under study as part of the territorial and sectoral structure that performed specific functions for it. During the second half of the 17th century – the first half of the 18th century, convicts' labour remained to be a compensatory punishment. Humanization of this punishment was connected with the appliance of exile, where convicts were attracted to work (in some cases – equal to their profession) on the remote areas.

Penitentiary policy of Russia in the heyday of absolutism had a pronounced focus on strengthening the social and political system that was being formed at that time. The monarchy strengthened its position by forming a class of loyal to the throne landowners who had extended rights to participate in criminal and penitentiary proceedings. At the same time, the processes of convicts' labour organization had a decisive role in the sphere of criminal penalties' execution.

Most of the legislative innovations of the analysed period were directed on reinforcement of the class stratification of society, strengthening the power of the nobility. The economic aspect had less influence on the development of the penitentiary law than it had during the period of Peter's the Great reforms. At the same time, we note that the legal doctrine that determined the development of penitentiary law was also formed in isolation from the economic realities, which determined the initially "dead" nature of a number of normative acts. Orientation on the progressive political and legal teachings of European thinkers-contemporaries of the ruling monarch, has determined a significant humanization of the domestic penal legislation, which hasn't reflected on law enforcement

practice. Labour started to play role of a correction remedy, that wasn't aimed on getting a profit for the state. Despite the class character of the justice system, transformation of the convicts' labour phenomenon and its humanization took place in that time.