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The criminal policy of the Russian Federation on protection of sexual integrity of minors

Sexual inviolability and sexual freedom of the individual make a part of the fundamental rights and freedoms which were determined and guaranteed by the Constitution of the Russian Federation. For a considerable period of time protection of sexual inviolability and sexual freedom of minors has been the priority line of the Russian criminal policy.

Indeed, a lot of changes related to the toughening of punishments for crimes against sexual inviolability of minors in recent years have been made in the sphere of criminal legislation of the Russian Federation: some amendments were introduced in Chapter 18 of the Criminal Code, sanctions for committing of crimes were made tougher, the term 'disorder of sexual preference' or 'pedophilia'; was introduced at the legislative level.

However, despite the improvement of the criminal justice measures, the rise in number of sexual crimes against minors in the overall structure of crimes² determines the relevance of the development of more effective means devoted to protection of minors from sexual offences.

According to the official data of the Ministry of Internal Affairs of the Russian Federation in 2015 10 942 cases of sexual offences against minors were registered. In four years statistics had grown almost twice as in 2012 there were less than 5 600 of such cases.

Apportionment of crimes against sexual inviolability of minors in a separate group becomes possible due to the presence of several common characteristics inherent to them.

Firstly, in case of sexual violence that is carried out in relation to an adult person the object of harming is sexual freedom of the individual but in relation to a minor it is appears to be sexual freedom and sexual inviolability, as well as her or his mental and physiological development. According to the opinion of R.G. Pavlov, the damage, in addition to aforesaid consequences, can also affect the future of the state and society³. But it could not be considered as a distinctive trait of sexual crimes against minors, due to the fact that this feature in one degree or another is inherent in almost all crimes;

Secondly, the minors have the psychological and physiological features which largely determine their reaction to the crime. They are characterized by suggestibility, helplessness in the face of adults' authority and low ability to find ways out of difficulties, unexpected

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² Pantyukhina I.V. Evaluation of the reforms in the sphere of sexual crimes // Legal Science. No. 2. 2015. P. 76.

³ Pavlov R.G. Legal measures of prevention of crimes against sexual freedom of minors // The territory of science. No. 3. 2015. P.168.



situations and so forth. All of these qualities are of importance to *study* and research on victims;

And last but not least feature is that minors often depend directly on sex offenders. According to the statistics last year every sixth offence against life, health and sexual inviolability of minors was committed by members of their family or close people⁴. In this case the offender has more means of exerting influence on the victim and do everything possible to conceal the fact of committing crime acting as a 'blocking subject'⁵.

The above-mentioned features of this type of sexual crimes underlie the causes of the latency of child sexual abuse claim. To date the latency of sexual crimes against minors remains an actual problem for the criminal science and criminal policy. Thus, as the main causes of the latency scientists stand out: intimacy of sex, incest or close relationships between offender and victim, victims' fear and shame, intimidation and bribery, inability of victim to understand the illegality of sexual assault.

On account of the presence of a powerful destructive impact of blocking agents on victims the criminal policy pays special attention to attempts of lowering their effect and toughening punishment for them. Currently there is a proposal to expand the range of subjects for whom the fact of committing crime against a minor would be considered as an aggravation. In the list of this kind of offenders will probably be included relatives (not only close); spouses or common-law partners of parents; a person who is legally responsible for minor's upbringing and members of this person's family; a person residing with a minor in the same living space. This initiative belongs to V.I. Markin⁶ - the head of Directorate for the interaction with the media of the Investigative Committee of Russia.

In addition, V.I. Markin considers that it is appropriate to toughen criminal responsibility for the concealment of crimes committed against children and adolescents⁷. In accordance with the Constitution of Russian Federation this measure will not be fully effective if there is

kinship or consortship between the offender and the concealer (for example, the victim's mother and her husband) because 'no one shall be obliged to give incriminating evidence, husband or wife and close relatives the range of whom is determined by the federal law'.

To date, one of the aims of the criminal policy is enactment of the federal law concerning the family violence *prevention* and pursuing as one of its goals the protection of sexual

⁴ The Russian Ministry of Internal Affairs discussed the measures for prevention of crimes in the sphere of family conflicts [Electronic resource]. – URL: <https://01.mvd.ru/news/item/3258153/?print=1>

⁵ Pavlov R.G. Legal measures of prevention of crimes against sexual freedom of minors // The territory of science. No. 3. 2015. P.169.

⁶ The punishment for the offense against the sexual integrity of children committed by parents can be tightened [Electronic resource]. – URL: <http://www.garant.ru/news/561427/#ixzz42AEvVxll>

⁷ The Investigative Committee of the Russian Federation proposes to introduce criminal liability for concealment of child abuse [Electronic resource]. – URL: <http://www.garant.ru/news/430505/#ixzz42AFML3rB>



integrity of minors⁸. It is worth noting that one of the principles in this act emphasizes the priority of preventive measures over the repressive.

Currently, many experts of criminal law mark out the need to improve the tactics of sexual crimes prevention.

So, pedophiles suffering from a disorder of sexual preference are the most dangerous threat for minors. It should be emphasized that the term "pedophilia" is purely medical and sexological. Forensic G.B. Deryagin believes that pedophilia is considered as a specific social construct of our society, where sex between children and adults is prohibited. Thus, the usage of the term "pedophilia" would be incorrect in other societies with different ideas about morality and ethics⁹.

Thus, in order to prevent crimes there is a proposal to create a unified database of sex offenders, by analogy with the United States and England¹⁰. In the United States there is The National Sex Offender Public Website coordinated by the Department of Justice. This database allows you to find out the identity of the alleged offender and identify her or his location. In England, the analogous online database contains photos and addresses of pedophiles.

The new act on March 29, 2016 proposes to create a police data bank with the information about the location of pedophiles ever convicted of sexual offenses against minors. But most importantly, the initiative requires the police to inform people living in the neighborhood. This initiative belongs to A.V. Belyakov – *Russian statesman and politician*. He was also the initiator of the draft amendments to the law on police.

According to the senator, this initiative corresponds to the international experience. Truly, analogous measures are used in the United States, France, Great Britain, Estonia and South Korea. According to his data, statistical studies conducted by South Korean experts have shown that with the electronic movement control device the offender is less prone to repeated committing of offence. Thus, only 1 out of 219 people, who were wearing electronic bracelets, has committed a similar crime again.

A.Y. Kuznetsova, The Ombudsman for Children, is also confident that the federal registry of pedophiles may contribute to the protection of children¹¹.

Nevertheless, public access to the data bases of pedophiles has the repressive nature, spreading punishment beyond the limits of the legal framework. A major role in the prevention of sexual crimes and rehabilitation of offenders is played by their company and socie-

⁸ The Russian Ministry of Internal Affairs discussed the measures for prevention of crimes in the sphere of family conflicts [Electronic resource]. – URL: <https://01.mvd.ru/news/item/3258153/?print=1>

⁹ Deryagin G.B. Pedophilia (Author's version of Article, 2011) // Sexology and sexual pathology. No. 2. 2006. P. 37-46.

¹⁰ Fomenko A.I. Actual issues of the prevention of crimes committed through the Internet by persons suffering from the peculiarities of sexual preference (pedophilia) // Theory and practice of social development. No. 10. 2015. P. 91.

¹¹ Pedophiles will be written down in the register [Electronic resource]. – URL: <https://rg.ru/2016/12/24/pedofilov-zapishut-v-reestr.html>



ty. However, such an invasion into the sphere of their private life can cause the aggressive behavior towards them, for example, by the parents of children and adolescents living in the same neighborhood, thereby pushing the offender to the second offence.

In foreign countries, there is the practice of identifying people with the pre-criminal behavior using traps and tracking visits to sites where there is child pornography. However, such measures require significant technical support. For example, Microsoft has created a special program that monitors the porn sites, looking for potential sex offenders¹². Russian programmers also offer to develop a site-trap for pedophiles, which will expand the risk group database.

Additionally, the prevention effect can be caused by the exclusion of superfluous administration in the rendering of psychological and psychiatric care for people with sexual disorders, guaranteeing anonymity and observance of strict confidentiality as well¹³.

To improve the crime detection rate law authorities also use a genetic database. In 2015, the Ministry of Internal Affairs of the Russian Federation prepared the draft of the Federal Law "On Amendments to the Federal Law "On State Genomic Registration in the Russian Federation". According to the official website of the Ministry of Internal Affairs, the act has been prepared pursuant to the Russian Government instructions and proposes a number of changes in order to fulfill the gaps of legal regulation and the resolution of other problems appeared in connection with the practical work of law enforcement agencies¹⁴. The database expansion is planned to carry out with the aid of inclusion of information about people who were convicted and now are serving sentence for crimes or earlier were serving sentence for committing grave or especially grave crimes but did not pass the mandatory state genomic registration, and also people suspected of committing a crime, accused of committing crimes or are under administrative arrest. The act specified grounds for mandatory state genomic registration of these categories of people.

The existence of a genomic database, from the other hand, is justified because it has a positive effect on the process and the result of the preliminary investigation. Moreover, this measure is not public and, in contrast to the open database of pedophiles, data is used exclusively within the framework of criminal proceedings.

On January 11, 2017, the State Duma of the Russian Federation considered the act of A.V. Belyakov about amendments to art. 79 and 80 of the Russian Criminal Code, the main point of which is to abolish the possibility of parole in the case of committing crimes against sexual inviolability of minors, as well as the ban on replacement of the unserved part of sentence with a milder form of punishment for prisoners of this category. The senator considers that this initiative does not defy the provisions of the Constitution and the

¹² Fomenko A.I. Actual issues of the prevention of crimes committed through the Internet by persons suffering from the peculiarities of sexual preference (pedophilia) // Theory and practice of social development. No. 10. 2015. P. 91.

¹³ Pavlov R.G. Legal measures of prevention of crimes against sexual freedom of minors // The territory of science. No. 3. 2015. P.172.

¹⁴ The use of genomic information in the the Russian Interior Ministry contributes to the successful disclosure of crimes [Electronic resource]. – URL: <https://mvd.ru/news/item/6180238>



basic principles of criminal law, and serve to ensure the safety of children¹⁵. Nonetheless, there is an opinion that the enactment of the act under consideration would violate personal dignity and also the principles of humanism, justice and the rule of law.

To improve the criminal policy in the sphere of the protection of sexual integrity of minors the experts take into account the experience of other countries. Thus, according to the Federal Law “On Amendments to the Criminal Code of the Russian Federation and Certain Legislative Acts of the Russian Federation in Order to Strengthen Accountability for Sexual Offenses Committed Against Minors” of February 29, 2012 no. 14-FL chemical castration has got legislative fastening in the Russian Federation as a compulsory measure of a medical nature. However, Russian Federal Service of punishment fulfillment informed that by 2016 this measure had never been applied. Furthermore, the same Federal law prescribes life imprisonment for repeated offences of child molesters and the ban on the conditional sentence for the rape of children under 14 years.

The first reported use of hormonally based medications to reduce pathological sexual behavior in men occurred in 1944 when the progesteronal hormonal compound diethylstilbestrol was prescribed to lower male testosterone. During the 1960's German doctors prescribed anti-androgen drugs to treat deviant behavior resulting from the male paraphilia, i.e. violations of orientation of sexual attraction. In 1966, John Money became the first U.S. researcher to use medroxyprogesterone acetate (MPA) in the treatment of sex offenders when he administered the drug to a bisexual transvestite who was in therapy for pedophilic behavior with his six-year-old son. Since then, the IPA has become the main ingredient, which is used for chemical castration, although it is not authorized by the US Food and Drug Administration. For example, the IPA is the component of the drug Depo Provera¹⁶.

To date, the use of chemical castration has proven its effectiveness: sex offender recidivism has dramatically decreased from 75% to 2%¹⁷. In general, chemical castration was an important step in the fight against pedophilia and child abuse by means of punitive and rehabilitative measures. This procedure, of course, is both a deterrent and a way of healing from paraphilia. Only imprisonment would not be enough for radical changes but chemical castration gives us an opportunity to achieve results quickly and to abolish the punishment in the case of a miscarriage of justice. In comparison with other methods (such as capital punishment or surgical castration) chemical castration is more effective and safe, but at the same time less inhuman.

However, benefits do not eliminate the ethical and practical drawbacks of chemical castration. Chemical castration can cause severe cardiovascular disease and increase the risk of

¹⁵ Anton Belyakov proposes to prohibit conditional early release for pedophiles in principle [Electronic resource]. – URL: <http://inform-24.com/4098-anton-belyakov-predlagaet-zapretit-uslovno-dosrochnoe-osvobozhdenie-pedofilov-v-principe.html#ixzz4VkwfC0Jm>

¹⁶ Scott, Charles L., & Holmberg, Trent. (2003). Castration of Sex Offenders: Prisoners' Rights Versus Public Safety. *J Am Acad Psychiatry Law*, 31. P. 502.

¹⁷ 16 Compelling Chemical Castration Statistics [Electronic resource]. – URL: <http://healthresearchfunding.org/16-compelling-chemical-castration-statistics/>



heart attack and stroke. Moreover, there is no broad practice of application of this compulsory measure of a medical nature to women. It is also important to stress that the effect of the drugs used in the process of the chemical castration can be neutralized to some extent by other hormones during or after treatment.

The legislative fastening of the chemical castration as a compulsory measure of a medical nature remains the contentious issue due to the number of problems. For instance, the chemical castration involves high costs for the state - about 32 million rubles per year¹⁸. This situation is also exacerbated by the increase of prices for imported medicines. Moreover, human rights activists believe that the police will create an unofficial plan – for example, to castrate 100 pedophiles per year. Another problem associated with the use of forced chemical castration in Russia is an imperfection of the psychiatric examination procedure.

Despite the drawbacks, the adoption of a compulsory chemical castration is extensively lobbied in political and public spheres. However, public opinion has undergone some changes in recent years. In 2011 the Russians considered forced chemical castration to be an adequate measure for sex offenders, but in 2016 about 70 percent of respondents were in favor of introducing the capital punishment for pedophiles¹⁹.

In summary, we can draw the following conclusions about the criminal law policy:

- Criminal policy is aimed at the prevention of sexual offenses against minors;
- Criminal policy is focused on tightening penalties for sexual offenses against minors;
- Criminal policy is developing into two directions: the protection of children's rights and freedoms within the family and outside it;
- Nowadays technical support plays an important role in prevention and disclosure of sexual offence;
- The fight against sexual offences is strongly linked with the problem of restrictions on the rights and freedoms;
- For the improvement of the criminal policy in the sphere of the protection of sexual integrity of minors the experts take refer to the foreign experience.

¹⁸ Minges I.A. Chemical castration of pedophiles: the pros and cons // Theory and practice of social development. No. 21. 2014. P. 134.

¹⁹ Chepovskaya A. Vaccination against libido [Electronic resource]. – URL: <https://lenta.ru/articles/2015/10/25/pedophile/>