

## **CRIMINAL CONVICTION IN THE SOVIET LEGISLATION OF THE PRE-WAR PERIOD (1917-1941)**

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### **Abstract**

The article reveals the history of the origin and development of the criminal conviction in the Soviet criminal law. It involves the analysis of the USSR legislation (1922), Soviet Russia legislation (1917) and other union republics legislation, Soviet scientific literature, the decision of the Plenum of the Supreme Court of the USSR. The formation of the criminal conviction institute dates back to mid-1920 with the legislative recognition of the criminal conviction expungement in the institution of the probation. The most detailed the criminal law and general legal consequences of the criminal conviction were disclosed in the legislation.

**Keywords:** Soviet criminal law, criminal conviction, criminal conviction expungement, consequences.

### **1. INTRODUCTION**

There were no norms on criminal conviction in the Guiding Principles of the Criminal Law of the RSFSR of 1919, in the original drafts of the Criminal Code of the RSFSR of 1922 and the Basic Principles of the Criminal Legislation of the Soviet Socialist Republics Union and the Union Republics of 1924.

In the scientific articles of the pre-war period nothing was said about the possible impact of pre-revolutionary law on the previous conviction. Although the Decrees "On the Court" dated by November 24, 1917 and March 7, 1918 allowed the courts to apply the laws of overthrown governments. The prerevolutionary law considered the consequences of conviction (adjudgement) to certain types of punishment (death penalty, hard labor, exile to a settlement, imprisonment in a correctional house) as a consequence of previous convictions. And it was also related to the deprivation of rights with regard to imprisonment (Gabdrakhmanov, 2015).

In the Soviet legislation there is no definition of criminal liability. The scientific community of criminal law tried to fill this gap only in the 1960s and 1970s. V.V. Golina stressed that using a criminal punishment as a form

of coercion the Soviet state creates a conviction as a special status for a person (Golina, 1979). V.P. Malkov determined as a criminal record the fact of the conviction of a person by the Soviet court to a criminal punishment for committing one or several crimes. That fact according to the legislation of that time had a legal significance (Malkov, 1974).

Usually the criminal record is determined in the actual meaning in other words that the person was convicted for committing a crime. The term "conviction" is also used in the meaning of a moral conviction of the person who committed the crime and who is convicted for this by the court. In the legal sense the criminal conviction can be regarded as a circumstance that reinforces the responsibility of a person when he repeatedly commits a homogeneous or any other crime or draws certain legal restrictions.

Criminal conviction in Soviet criminal law was determined as the presence within the statutory period of certain legal restrictions for a person after serving the sentence related to the choice of residence, work, etc., as well as the possibility of certain legal consequences if that person committed a new offense.

Under the Soviet criminal law a person convicted by a court to a certain extent of criminal punishment for committing an offense was recognized convicted from the moment of entry into a force of the judgement of guilt. The convict was considered to be convicted both during the serving of the punishment and during the period determined by law after serving the sentence. From this rule the law made an exception for servicemen convicted to serve their sentence in a disciplinary battalion or to keep them in a guardhouse instead of correctional labor (Eraksin, Pomchalov, 1963).

Thus the distinctive feature of the criminal record was the guilty verdict of the court that entered into legal force.

## **2. OPINIONS AND DISCUSSION**

A Criminal Code of the RSFSR was adopted in May 24, 1922. It was carried into force throughout the territory of the RSFSR from June 1, 1922. Later in 1922-1923 the criminal codes were also adopted in other union republics such as Ukrainian, Belarusian, Georgian and Azerbaijan. The Criminal Code of the RSFSR of 1922 was an example for them. According to the provisions of the USSR Constitution of 1924 the legislative bodies of the USSR adopted the Basic Principles of Criminal Legislation of the USSR and Union Republics. On November 22, 1926 the Criminal Code of the RSFSR was adopted and put into effect on January 1, 1927. Criminal codes of other union republics of 1927-1935 had a lot in common with the Criminal Code of the RSFSR of 1926 but differed in some peculiarities of national and local character.

For the first time in criminal law three types of repayment of criminal conviction were established in the decree of February 9, 1925. These types had their own distinctive features:

- 1) Repayment of previous conviction for persons conditionally convicted;
- 2) Repayment of previous conviction for persons sentenced to imprisonment for a term not exceeding 6 months or another milder measure of punishment;
- 3) Repayment of previous conviction for persons convicted of imprisonment for more than 6 months, but not more than 3 years.

Consequently, the conviction of those sentenced to imprisonment for more than 3 years was not repaid.

The legal formation of the criminal record in Russia began with the repayment of the criminal record as one of the ways of its cancellation. This is one of the evidences of the heterogeneity of the criminal record in which the consequences were its qualitative characteristics.

The Criminal Code of the RSFSR was published on January 1, 1927 in the edition of 1926. The article 55 of it provided that if during a trial period the convict did not commit a new, equally serious crime, the verdict of the court should have been considered invalid and the conditionally convicted person shall be recognized non-convicted. The same situation was applied to those sentenced to deprivation of liberty for a term not exceeding 6 months or to any other milder measure of social protection if within three years from the date the sentence entered into legal force they had not committed any other crime, and also to those sentenced to imprisonment for more than 6 months, but not more than 3 years, unless they commit another crime within 6 years.

Thus the conditionally convicted person was obliged not to commit any new crime during the trial period in order to repay the conviction. This condition corresponded the legal nature of the repayment of the criminal record.

On February 25, 1927 the basic principles of the criminal legislation of the USSR and the Union Republics were supplemented by the article 10.1 which reproduced the provisions of the Decree of the All-Russian Central Executive Committee and the Council of People's Commissars of the RSFSR of February 9, 1925. The provisions of Article 10.1 of the Basic Principles were subsequently reflected in the relevant articles of all the penal codes of the Union republics.

Thus in respect of persons sentenced to imprisonment for more than 3 years the criminal conviction was not extinguished, but could be removed only by amnesty or pardon.

By a decree of June 6, 1927 article 55 of the Criminal Code of the RSFSR of 1926 was set out in accordance with Article 10.1 of the Basic Principles. However, the article 10.1 of the Basic Principles set the condition for the repayment of a conviction of the failure to commit any crime within the time limits specified in this article. And at the same time article 55 of the Criminal Code of the RSFSR of 1926, in a new wording, set the non-committing of an equally serious crime as a condition for the repayment of a conviction. Article 50 of the Criminal Code of the Ukrainian SSR interpreted the notion of a new crime more narrowly than article 10.1 of the Basic Principles.

Article 55 of the Criminal Code of the RSFSR and article 49 of the Criminal Code of the Tajik SSR softened the conditions for the repayment of conviction, namely: the commission of an equally serious crime by a conditionally convicted person prevented his declaration non guilty.

The Plenum of the Supreme Council of the USSR directed attention to the discrepancies in the legislation of the Union republics with the all-Union legislation. And in the decree of February 10, 1940 "On the terms of repayment of convictions for persons sentenced to forced labor" it indicated that in case of divergence of the all-union law with the law of the republic the first one has the advantage.

The length of the term repaying the previous conviction was determined in case of parole, amnesty or pardon not from the appointed but from the actually served sentence. The beginning of that period was not the day of graduation, i.e. the calendar expiration of the punishment imposed by the court, but the day of its actual time of service. The proposed procedure for calculating the maturity of the criminal record corresponded to the legal nature of the repayment of conviction.

Another form of cessation of criminal record is the removal of a criminal record. It was introduced in 1927 by including the relevant items in acts of amnesty or pardon. The issue of the removal of previous convictions was regulated by article 10.1 of the Basic Principles (article 55 of the Criminal Code of the RSFSR). The removal of the criminal record by virtue of acts of amnesty and pardon was carried out regardless of the timing and severity of the punishment. Thus, by decree of the Presidium of the Central Executive Committee of the USSR from November 2, 1927 "On Amnesty" in commemoration of the 10th anniversary of the October Socialist Revolution a conviction was lifted from the workers convicted for the first time and served the main measure of punishment by that time. Also a conviction was lifted from persons who have been released early or brought to conditional condemnation or to correctional labor.

Article 10.1 of the Basic Principles did not mention the removal of the conviction from persons sentenced to correctional labor. The Plenum of the Supreme Court of the USSR in a ruling dated of February 10, 1940 indicated that within the meaning of article 13 of the Basic Principles the correctional labor is a milder punishment than deprivation of liberty. Convicts sentenced to corrective labor up to 1 year inclusive are recognized as having no previous conviction after 3 years from the date of serving the sentence.

In 1933 and 1938 criminal record was removed from the participants in the construction of the White Sea-Baltic Canal and the Moscow-Volga channel (respectively, with 500 and 600 people).

By a decree of the Central Executive Committee and the Council of People's Commissars of the USSR of July 29, 1935 the criminal conviction was dropped including for additional punishments from collective farmers sentenced to imprisonment for a period not exceeding five years or to other milder measures of punishment, and from those who served the sentence or were released ahead of time if they faithfully and honestly worked on collective farms. On August 11, 1935 the decree "On the exemption from further serving the sentence removing the criminal record and all the legal restrictions associated with the conviction of a number of officials convicted in due time in connection with the sabotage of grain procurement and the issuance of labor loans, coupons and other money surrogates" was adopted by the Central Executive Committee of the USSR.

In the Decree of the Presidium of the Supreme Court of the USSR on amnesty to commemorate the 20th anniversary of the Workers and Peasants Red Army and Navy approved by the People's Commissariat for Internal Affairs of the USSR, the People's Commissariat of Justice of the USSR and the USSR Prosecutor

on February 5, 1938 it was specifically noted that the removal of criminal record from the conditionally convicted military servicemen occurs automatically and these persons are recognized as having no criminal record.

Those who have served a sentence of imprisonment for more than 3 years like everyone generally convicted of any punishment were entitled to apply for pardon to the Presidium of the Supreme Court of the USSR or to the Supreme Court of the Union Republic (depending by which court that person was convicted). The condition for the removal of the previous conviction was the failure to discharge the new crime within a certain period. The highest authorities exercising the right of amnesty could remove the criminal conviction regardless of the terms and severity of the punishment.

In the early years of Soviet power the consequences of conviction laid in the basis of legal restrictions. But if in the prerevolutionary legislation the consequences of conviction (criminal record) depended on the type of punishment in Soviet Russia they depended on the type and specific composition of the crimes. The legal restrictions connected with the fact of conviction and the general legal consequences of the previous conviction, which were close to the modern concept, were fixed in the first Constitution of the RSFSR of 1918. The article 65 of which established that the persons who were convicted for mercenary and discrediting crimes for a period established by law or a judicial sentence could not be elected. Deprivation of electoral rights served as a legal basis for restricting the rights of citizens in various branches of law.

All the consequences of previous criminal conviction in the prerevolutionary law can be divided into two groups: criminal-law and general-law consequences (Baskakova, Gabdrakhmanov, Gorbunova, Smirnov, 2015).

1. The guiding principles on the criminal law of the RSFSR of 1919 began to take account of the criminal consequences of the criminal conviction. They found that when determining the penalty, it was necessary to distinguish, in particular, "whether the act was committed by a professional criminal (recidivist) or primary" (article 15 clause «g») (Gorbunova, Kurtz, 2004). The punishment in the form of the deprivation of rights was the forfeit of active and passive electoral rights and formed the basis for legal restrictions in other branches of law. In the Special Part of the Criminal Code of the RSFSR of 1922 the criminal conviction was a condition qualifying corpus delicti. The code did not set a deadline for such a conviction (Grishko, 2010). In the Criminal Code of the RSFSR of 1926 the criminal consequences of the criminal record were taken into account in the qualification of crimes, the appointment of punishment. They were also manifested in the form of constructive, qualifying signs of a crime or a crime committed under aggravating circumstances, etc.

2. In the modern world the general legal consequences of a criminal conviction limit civil rights, employment and labor relations, custody and guardianship, etc. In the Soviet legislation of the pre-war period the general legal consequences of the criminal record did not differ from the modern principles and concerned the labor, social and other rights of citizens and stemmed from deprivation of electoral rights. Even after felons complete their sentences, they often find the whole classes of key privileges revoked and opportunities blocked (Wheelock, 2005).

Even in the decision of the Soviet Control Commission under the Council of People's Commissars of the USSR "On the consideration of workers' complaints" approved by the Council of People's Commissars of the USSR on May 30, 1936 it was pointed out that it was necessary "to stop dismissals and refusal to hire by Soviet, economic and other organizations for such reasons as Previous conviction".

The legislation on the judicial system of the RSFSR and the USSR tightened the requirements for persons who could take the position of judicial investigators. Thus, a person who had a criminal record could not be elected a judge and a people's assessor. People convicted of crimes before the full repayment of the conviction did not have the right to hold the posts of the secretary of the people's court, a member of the defense lawyers association, a judicial custodian.

The Decree of the Council of People's Commissars of the RSFSR of December 31, 1940 prohibited the employment of people who have a criminal record for embezzlement, stealing and other self-serving misconduct on jobs related to material values.

The repayment or removal of a previous conviction meant that a person is considered to be the one with no criminal background. Earlier in the its order dated by August 14, 1937 the People's Commissariat of Justice of the USSR noted that persons who are recognized as having no criminal record on the basis of article 10.1 of the Fundamental Principles of the Criminal Law of the USSR and the Union Republics and on the basis of Article 55 of the Criminal Code of the RSFSR and the relevant articles of the Criminal Codes of other Union

republics people whose conviction has been withdrawn by way of general or private amnesty had the right to answer in a questionnaire on the item of a previous record: "no criminal conviction".

The criminal-executive consequences of the criminal conviction began to be formed under the influence of by-laws (Regulations on general places of detention of the RSFSR, on forced labor camps, etc.). They manifested the division of convicts into categories. When the prisoners were placed in forced labor camps they were classified. Such a classification depended, in particular, on whether the prisoner was convicted for the first time or not.

The policy of the Soviet state was aimed at the speedy return of convicts to a normal life. And now Scholars and policy makers wish to eliminate many collateral consequences to promote successful offender reentry (Goulette, Reitler, Frank, Flesher, Travis, 2014).

### **3. CONCLUSION**

Conceptually the approaches of the legislator to the institution of criminal conviction in the pre-war period are not significantly different from today. The Soviet law did not define the criminal record so the science was developing this institute. The judgment of conviction which had come into effect was the constitutional sign of the criminal record. The appointment of punishment was not an obligatory condition for the onset of a criminal record. The consequences of the previous conviction could be terminated in two ways: repayment and withdrawal. In the initial period the Soviet criminal law was influenced by the prerevolutionary law in which the consequences of conviction were identified with the consequences of conviction (adjudgement). Initially all the legal restrictions resulted from the fact of condemnation. Legislative regulation of criminal record in the legislation of Russia and the USSR began in the sphere of conditional conviction with the repayment of a criminal record and in the future with its removal. With the appointment of punishment in the form of the deprivation of rights were related all subsequent restrictions on the rights of citizens (electoral, labor, etc).

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