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BONDARENKO Inna Aleksandrovna

**ORGANIZATIONAL AND LEGAL FOUNDATIONS OF THE
PENITENTIARY SYSTEM OF THE RUSSIAN EMPIRE IN THE 19TH –
EARLY 20TH CENTURIES: EMPIRE-WIDE TRENDS AND REGIONAL
FEATURES (THE CASE OF THE DON COSSACK HOST OBLAST)**

5.1.1. Theoretical and Historical Legal Sciences

ABSTRACT

of a dissertation submitted for the academic degree of
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Academic supervisor:
Doctor of Legal Sciences, Professor
Gennady Gennadievich Nebratenko

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Relevance of the research topic. The relevance of the research topic stems from the need for a comprehensive historical and legal understanding of the processes of formation and evolution of the penitentiary system of the Russian Empire, taking into account the regional features of its functioning, which for a long time remained on the periphery of scholarly attention. In terms of academic theory, the study of the integration of the penitentiary institutions of the Don Cossack Host Oblast into the empire-wide system in the 19th – early 20th centuries makes it possible to reveal the features and the limits of the operation of nationwide legal regulation under the special legal regimes of individual territories.

The academic significance of this subject is also determined by the fact that the penitentiary system of the Russian Empire of the 19th – early 20th centuries was an important element of the machinery of state, ensuring the implementation of judicial policy and the maintenance of law and order. The transfer of the prison institutions of the Don Cossack Host Oblast to the jurisdiction of the Ministry of Justice and their subordination to the Main Prison Administration completed a lengthy process of institutional integration, in the course of which the previously existing forms of administration, funding and staffing were revised. An analysis of these changes makes it possible to identify stable patterns in the formation and functioning of penitentiary institutions under conditions of administrative centralization and the redistribution of powers among public authorities.

Of particular importance is the study of the crisis of the regional model of penitentiary institutions in the Don region, which became apparent at the end of the imperial period. It was caused by the mismatch between the centralized requirements of legal regulation and the regional administrative practices that had taken shape earlier, based on the special status of the territory and the specific nature of its administrative organization. Identifying the causes of this crisis is of both theoretical and practical significance, since it makes it possible to trace the limits of permissible differentiation in legal regulation and the conditions for the integration of territorial institutions into the nationwide system.

The relevance of the study is reinforced by its connection with the contemporary tasks of state development of the Russian Federation (hereinafter the RF). The National Security Strategy of the RF emphasizes the need to ensure the stability of the system of public administration, the unity of the legal space and the coordinated functioning of public authorities throughout the country. The accomplishment of these tasks presupposes recourse to the historical experience of the formation and transformation of state institutions, including in the sphere of the execution of criminal penalties, where the problems of the relationship between centralization and territorial specificity manifested themselves with particular acuteness.

The practical and applied significance of the work is connected with the contemporary processes of optimization of the Russian penal system. Official strategic documents point directly to the need for a systematic renewal of its organization and legal regulation. The organizational and legal model that took shape in the Don Cossack Host Oblast, where prison institutions historically combined various functions, provides concrete material for assessing the effectiveness and the risks of present-day reforms. The study of the experience of adapting empire-wide legislation to the conditions of a region with a special legal status is significant for the development of scientifically grounded approaches to the regional dimension of the execution of criminal penalties, taking into account the historical, cultural and socio-economic features of the territories.

A historical and legal analysis of the integration of the Don penitentiary institutions into the system of the Ministry of Justice of the Russian Empire makes it possible to identify the factors that reduced the effectiveness of institutional reforms, including interdepartmental inconsistency, difficulties in harmonizing regulations, and constraints of a financial and organizational nature. An understanding of these factors is of applied significance for the development of scientifically grounded approaches to assessing risks in the reform of contemporary legal institutions, primarily in the sphere of penal policy.

Thus, the study of the organizational and legal foundations of the penitentiary system of the Russian Empire in the 19th – early 20th centuries, carried out with a view to identifying empire-wide trends and analysing regional features using the example of the Don Cossack Host Oblast, is of comprehensive academic and practical significance. In academic terms, the work contributes to a deeper understanding of the patterns of formation and evolution of state institutions, the mechanisms of legal regulation and the specific features of the functioning of the system of execution of criminal penalties under a combination of nationwide norms and special legal regimes of individual territories.

In practical terms, the results of the study make it possible to draw on the historical and legal experience of the Russian Empire in understanding the contemporary processes of development and optimization of the penal system of Russia. Taken together, these circumstances confirm the high relevance of the chosen research topic and its correspondence to contemporary academic and state-legal tasks.

The object of the dissertation research is the legally regulated social relations that took shape in the sphere of the organization, functioning and reform of penitentiary institutions in the south of the Russian Empire in the pre-Soviet period.

The subject of the dissertation research is the organizational and legal forms and the normative foundations of the establishment and development of the penitentiary system of the Russian Empire in the territory of the Don Cossack Host Oblast, including the features of its formation in the pre-reform period and the transformation of the Don regional institutions for the execution of criminal penalties under post-reform conditions.

The aim and objectives of the research. The aim of the dissertation research is to identify and provide a scholarly understanding of the processes of formation of the organizational and legal foundations of the penitentiary system of the Russian Empire in the 19th – early 20th centuries, taking into account the regional specificity of their functioning under the special legal status of the Don Cossack Host Oblast.

The stated aim is achieved through the accomplishment of the following **objectives**:

- to identify the empire-wide trends in the formation of prison institutions in the Russian Empire in the first half of the 19th century;
- to reveal the specific features of the emergence of prison institutions in the Don Cossack Host Oblast under its special legal status;
- to determine the legal position of the prison apparatus within the police system of the Russian Empire in the territory of the Don Cossack Host Oblast in 1802–1867;
- to identify the characteristic features of the development of the Don institutions for the execution of criminal penalties during the post-reform transformations of the second half of the 19th century;
- to determine the organizational and legal form of the incorporation of the prison apparatus of the Eastern Azov region into the system of the Don Cossack Host Oblast;
- to identify the causes and consequences of the weakening of the regional specificity of the penitentiary institutions of the Don Cossack Host Oblast in the course of their departmental integration into the Ministry of Justice of the Russian Empire in the late 19th – early 20th centuries.

The academic novelty lies in the fact that, for the first time, a comprehensive study has been undertaken of the formation of the penitentiary system of the Russian Empire in the 19th – early 20th centuries as a single organizational and legal process that developed under a combination of empire-wide legal regulation and regional specificity, using the example of the Don Cossack Host Oblast, which is confirmed by the following research results:

- a set of empire-wide trends in the formation of the prison institutions of the Russian Empire in the first half of the 19th century has been identified and systematized, comprising the secularization and centralization of the penitentiary function, the normative institutionalization of deprivation of liberty as an independent type of punishment, the functional and typological differentiation of

places of confinement, and the utilitarian, state-oriented character of penitentiary policy, which has made it possible to regard the development of the prison system as an integral process of normative ordering and organizational specialization within the estate-based structure of imperial society;

- it has been established that the emergence of penitentiary institutions in the Don Cossack Host Oblast at the beginning of the 19th century was characterized by the following features: the formation of places of confinement within the structure of police and investigative bodies rather than as independent institutions; the military and administrative character of their functioning and staffing; the absence of legislative regulation and reliance on customary law and Host enactments; and the functional universality of the prisons, which combined in a single institution temporary detention, the execution of the sentence and the transfer of convicts;

- the dual position of the prison apparatus of the Don Cossack Host Oblast within the police system of the Russian Empire in 1802–1867 has been determined and given a theoretical basis, expressed in the formal legal inclusion of the prisons in the police system of the Ministry of Internal Affairs while they remained in fact dependent on military and Host administration, which resulted in the incompleteness of departmental centralization, the decentralized character of the prison network and the persistence of hybrid forms of execution of criminal penalties;

- it has been established that in 1868–1894 the institutions for the execution of criminal penalties in the Don Cossack Host Oblast functioned as a distinct regional subsystem of the general police, characterized by the gradual introduction of nationwide police and judicial reforms; the persistent retention of the military and police character of prison administration; the expansion of the administrative functions of prison guardianship bodies in the absence of a specialized prison department; and the lack of uniform standards of material provision and of the detention regime, resulting from dual departmental subordination and a complex funding arrangement;

- it has been shown that in the 1888–1890s the incorporation of the prison apparatus of the Eastern Azov region into the system of the Don Cossack Host Oblast was accompanied by the persistence of differences in departmental subordination and in the legal grounds applied to prison administration, as well as by an expansion of the administrative and economic functions of the guardianship bodies;

- the causes and consequences of the loss of the regional specificity of the Don penitentiary system under the change of departmental subordination in 1895–1917 have been identified, and it has been shown that its incorporation into the prison administration structure of the Ministry of Justice of the Russian Empire was predominantly formal and administrative in character. It has been established that the centralization of administration and the unification of regime and staffing requirements were accompanied by the persistence of systemic constraints of a material, infrastructural and sanitary nature, as well as by a decline in the capacity of prison institutions to adapt to local conditions. It is substantiated that the loss of the autonomous elements of the regional model did not lead to a functional modernization of penitentiary practice but, on the contrary, increased the vulnerability of the Don prisons to the empire-wide crisis factors of the late 19th – early 20th centuries.

The theoretical significance of the dissertation research is determined by the fact that the results obtained contribute to the development of the history of the state and law of Russia, as well as to the study of the history of the law-enforcement and penitentiary institutions of the Russian Empire. The work fills gaps in historical and legal scholarship relating to the analysis of the organizational and legal foundations of the functioning of the institutions for the execution of criminal penalties in the territory of the Don Cossack Host Oblast, which possessed a special military-estate and administrative-legal status.

The study broadens scholarly understanding of the mechanisms of formation and evolution of regional penitentiary systems within an imperial state containing elements of legal asymmetry. The identified features of the relationship between

nationwide normative regulation and regional law-enforcement practice make it possible to refine theoretical propositions concerning the role of territories with a special legal status in the development of the institutions of public power and of the penal system of the Russian Empire. Of considerable importance is the introduction into scholarly circulation of previously unused archival materials that broaden the source base of historical and legal research.

The practical significance of the dissertation lies in the possibility of using its conclusions and generalizations in the analysis and understanding of the historical experience of the organization and reform of penitentiary institutions, including in the development of conceptual approaches to improving the contemporary penal system with due regard for regional specificity. The materials of the study may be of use in the work of the research and analytical units of public authorities, in the preparation of reference materials and expert opinions, and in the work of institutions engaged in legal appraisal and in the preservation of the historical and legal heritage.

The results of the dissertation research may be used in the preparation and academic support of regional historical-legal and memorial projects related to the history of law-enforcement and penitentiary bodies. Individual propositions of the work are applicable in the development of methodological recommendations and analytical materials aimed at studying the institutional continuity of the penitentiary system of Russia.

The materials of the dissertation research are used in the teaching of the courses "History of the State and Law of Russia", "Foundations of Russian Statehood" and "Foundations of National Security".

The methodological basis of the dissertation research rests on a wide range of empirical data systematized through general scholarly methods of cognition, including analysis and synthesis, induction and deduction, abstraction, modelling and analogy. The stated aim and objectives are achieved through the combined use of general scholarly and specialized legal methods that make it possible to take into

account the historical sequence of events and facts in the context of the evolution of the institutions of state and law.

The study is based on the principle of historicism, traditionally used in legal scholarship and underlying the logic of the presentation of the material, the structure of the dissertation and the interpretation of the sources. Its application made it possible to consider the process of formation and development of penitentiary institutions as a historical and legal phenomenon conditioned by changes in socio-political, administrative and legal circumstances.

Alongside this, the work employs a civilizational approach oriented towards taking account of the distinctive cultural and historical role of Russia as a multi-ethnic state formed at the intersection of Western and Eastern legal and socio-cultural traditions. This approach made it possible to identify the influence of estate, regional and cultural factors on the establishment and development of the penal system of the Russian Empire, including under the special legal status of the Don Cossack Host.

The analysis of the normative legal acts of the period under study as an independent source of legal information was carried out using the formal legal method, which made it possible to reveal the content, structure and orientation of the legal regulation of penitentiary relations. The historical and legal methodology found expression in the systematic use of archival materials, which afforded the opportunity to compare normative prescriptions with the actual practice of the functioning of the institutions for the execution of criminal penalties.

Of considerable importance in the study was the systems-structural method, determined by the chosen subject matter, which made it possible to regard the Don penitentiary system as a component part of the nationwide penal system of the Russian Empire that nonetheless possessed stable regional features. Within this approach, penitentiary institutions were analysed in their interrelation with the administrative-territorial organization, the system of public authorities and departmental subordination.

The use of the comparative legal method made it possible to compare the organizational and legal forms of the establishment and development of the Don regional institutions for the execution of criminal penalties with analogous institutions functioning in the provinces of the Russian Empire, which ensured the identification of both general patterns and the specific features of the regional model.

Propositions submitted for defence:

1. The formation of prison institutions in the Russian Empire in the first half of the 19th century was determined by the empire-wide trends of secularization and centralization of the punitive function, which led to a transition from church and monastic forms of isolation to a state system of execution of criminal penalties. Centralization was expressed in vesting the organization of prison affairs, the detention regime and the supervision of places of confinement in the bodies of state power, and secularization in the gradual removal of the function of executing sentences of deprivation of liberty from the jurisdiction of church institutions.

The empire-wide trends in the formation and development of prisons in the first half of the 19th century were expressed in the normative establishment of deprivation of liberty as an independent type of criminal punishment and in the development of codified criminal legislation that defined the legal grounds for its execution, as well as in the differentiation of detention regimes and the functional delimitation of places of confinement according to the nature of the offence and the legal status of the persons held.

The persistent trend towards the utilitarian use of the penitentiary system found expression in the use of deprivation of liberty not only as a measure of criminal punishment, but also as an instrument for realizing the military, economic and colonization interests of the state (item 40 of the passport of academic speciality 5.1.1. Theoretical and Historical Legal Sciences).

2. The emergence of penitentiary institutions in the Don Cossack Host Oblast at the beginning of the 19th century was distinguished by regional

specificity arising from the autonomous legal status of the region and the preservation of Cossack institutions of public power. The formation of places of confinement took place outside the framework of all-Russian legislation and rested on the norms of customary law, Host enactments and the administrative practice of the ataman's authority, which predetermined their incorporation into the system of investigative offices (*sysknye nachalstva*) and of the local police.

Organizationally, these institutions took shape as an element of military and administrative governance. They were subordinate to the bodies of Cossack self-government, were maintained out of local resources and were provided for by the service of Cossacks called up to perform "internal service". This model entrenched the police and custodial character of deprivation of liberty and precluded the development of specialized forms of prison administration.

The functioning of the prisons was determined by the utilitarian tasks of maintaining order and controlling the population, which was expressed in the combination within a single institution of the functions of detention in custody, the execution of criminal penalties and the transfer of prisoners, without institutional or legal differentiation of the persons held. Taken together, this indicates that at the early stage prison institutions in the Don Cossack Host Oblast were formed not as an element of state penitentiary policy, but as a derivative instrument of regional military and police administration, adapted to the conditions of the special legal status of the Cossack region (item 39 of the passport of academic speciality 5.1.1. Theoretical and Historical Legal Sciences).

3. In 1802–1867 the organizational and legal position of the prison apparatus within the police system of the Russian Empire in the territory of the Don Cossack Host Oblast was characterized by a duality of administration and by the incompleteness of departmental centralization. The Don prisons were formally included in the police system of the Ministry of Internal Affairs. The military-estate status of the Cossacks predetermined the *de facto* subordination of prison institutions to the Ministry of War, notwithstanding their formal inclusion in the system of civil administration.

The combination of all-Russian norms and Host legal acts determined a distinctive arrangement for the staffing, funding and supervision of prison institutions. The penitentiary system of the Don Cossack Host Oblast therefore retained an organizational decentralization and an internal heterogeneity, manifested in the division into Host and district prisons with differing levels of material provision, regime and administrative control.

Notwithstanding the processes of unification with the empire-wide system that began in the second half of the period under review (the introduction of prison guardianship committees, attempts to standardize record-keeping and construction), by 1867 the prison apparatus of the Don Cossack Host Oblast retained a decentralized and interdepartmental character of organization, with the features of a transitional, hybrid form of organization of places of confinement (item 41 of the passport of academic speciality 5.1.1. Theoretical and Historical Legal Sciences).

4. The development of the institutions for the execution of criminal penalties in the Don Cossack Host Oblast in 1868–1894 took place in the context of the nationwide reforms of the second half of the 19th century, with due regard for the special military-estate status of the region. The implementation of the reforms in the territory of the Oblast was marked by delay and by adaptation to local legal and administrative practices, which ensured the continuity of the previously established forms of organization of prison affairs. At the same time, prison institutions continued to be firmly dependent on the bodies of military and Host administration, including after their formal inclusion in the system of the Ministry of Internal Affairs.

The role of the institutions of prison guardianship consisted in providing for the administrative and economic activity of the institutions for the execution of criminal penalties amid uncertainty as to departmental responsibility. As a result, a stable combination of empire-wide legal regulation and military-police mechanisms of administration took shape, the consequences of which were the blurring of financial responsibility, the unsatisfactory condition of prison

infrastructure and a chronic shortage of resources. These circumstances testified to the incomplete institutional integration of the Don institutions for the execution of criminal penalties and to the persistence of regional specificity until the end of the period under review (item 42 of the passport of academic speciality 5.1.1. Theoretical and Historical Legal Sciences).

5. The prison apparatus of the Eastern Azov region was incorporated into the system of the Don Cossack Host Oblast in 1888–1895 amid an accelerated administrative and territorial reorganization of the region, while its special military-estate legal regime was preserved. The formation of a single penitentiary space was carried out in stages and was not accompanied by an immediate alignment of the organizational and legal foundations of prison administration with uniform standards.

The organization of the Azov prisons within the Oblast system was characterized by the persistence of departmental heterogeneity. The institutions of the Eastern Azov region, which had previously developed within the provincial model, were guided by the normative requirements of the Main Prison Administration of the Ministry of Internal Affairs of Russia. Meanwhile, the Lower Don penitentiary institutions continued to function in a military-police format under the administrative control of the Host authorities. A significant role in ensuring the coordinated functioning of the prisons was played by the guardianship bodies, which under the new conditions in fact performed expanded administrative and economic functions.

As a result, a transitional organizational and legal configuration of the penitentiary system took shape in the Don Cossack Host Oblast, within which the prison institutions of the Eastern Azov region were embedded in the Oblast apparatus without losing their previously established administrative and functional features, which caused internal heterogeneity and structural contradictions to persist until the completion of departmental unification (item 42 of the passport of academic speciality 5.1.1. Theoretical and Historical Legal Sciences).

6. In 1895–1917 the penitentiary institutions of the Don Cossack Host Oblast were definitively incorporated into the empire-wide system of administration of places of confinement as a result of the change in departmental subordination associated with the transfer of the Main Prison Administration to the Ministry of Justice of the Russian Empire (1895). This process was contradictory in character and combined the institutional ordering of prison affairs with the persistence of structural problems that had developed in the preceding period.

The positive results of integration included the unification of departmental management and reporting, the alignment of regime and organizational requirements with empire-wide standards, and higher requirements for the personnel of the prison administration. Of considerable importance was the development of the functional differentiation of penitentiary institutions, expressed in the formation of specialized forms of detention, in the institutionalization of sanitary and medical provision and in the strengthening of supervisory practices.

At the same time, the incorporation of the Don prisons into the centralized system was accompanied by increasing procedural formalization and by reduced promptness in resolving economic and sanitary matters; the retention of elements of mixed funding sustained budgetary uncertainty and limited the scope for infrastructural modernization. Overcrowding of places of confinement, unsatisfactory sanitary conditions and epidemiological threats were not eliminated under the conditions of the First World War and the revolutionary upheavals and acquired an entrenched character (item 43 of the passport of academic speciality 5.1.1. Theoretical and Historical Legal Sciences).

Approbation of the results of the dissertation research was carried out through presentations at international and all-Russian academic and practical conferences held in Moscow, Kirov, Omsk, Rostov-on-Don and Taganrog. The dissertation research was discussed at a meeting of the Department of Theory and History of Law and the State of the South-Russia Institute of Management – a branch of RANEPA under the President of the RF.

The main research results have been published in 15 articles, including 5 articles in journals recommended by the Higher Attestation Commission (VAK) of the Ministry of Science and Higher Education of the Russian Federation.

The topic of the dissertation research corresponds to the passport of academic speciality 5.1.1. Theoretical and Historical Legal Sciences.