

Michał Arsoba

University of Warmia and Mazury in Olsztyn
ORCID <https://orcid.org/0000-0003-1755-5777>

Exile as a legal institution in the Russian Empire*

Introduction

The search for commonalities between Poland and Siberia validates Antoni Kuczyński's observation that the links between Poles and Siberia are an integral part of the "complicated", four-centuries-long relationship between Poland and Russia. The history of that relationship dates back to Stefan Batory's Livonian campaign of 1577–1582, the Polish-Muscovite war, and the wars of the 17th century¹, when the first Polish prisoners of war were exiled to Siberia, giving rise to Polish-Siberian relations². Deportations to Siberia, initiated by the Russian Empire in pursuit of its imperial goals at the time of its political success and the crisis of Polish statehood, also involved more notable figures, including Polish nobles who were members of the Bar confederation and insurgents of the Kościuszko Uprising³. However, the Siberian exile system became deeply entrenched in national consciousness only during the Third Partition which led to the fall of the Republic of Poland in 1795. The occupants implemented a number of unification processes to eradicate Polish national identity, which left a lasting mark on Polish historical memory⁴.

These processes involved attempts to impose the Russian legal system in Poland, which not only legalized deportation to Siberia as an instrument of political repression and unlawful violence, but also introduced a new legal institution that had been long

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¹ A. Kuczyński, *Syberia – czterysta lat polskiej diaspory*, Wrocław 1993, p. 15.

² For more information about Polish prisoners of war in Siberia, refer to: A.C. Dobroński, *Wojsko Polskie na Syberii*, [in:] *Polacy na Syberii od XIX do XXI wieku*, ed. S. Leończyk, Warsaw 2019, pp. 75–76, and J. Wojciechowski, *Obraz Rosji w Rzeczypospolitej w drugiej połowie XVII wieku*, Katowice 2020, p. 212.

³ A. Kuczyński, op. cit., pp. 15, 57–60.

⁴ M. Karkowska, *Polska tożsamość narodowa w świetle badań społecznych*, „INFOS. Zagadnienia Społeczno-Gospodarcze” 2019 No. 3(256), p. 3.

established in the Russian Empire. The provisions of the Russian criminal justice system were implemented in Poland in the 19th century. This fact clearly indicates that the transfer of Russian legal norms contributed to the creation of a site of memory linking Poland with Siberia outside the general historical context.

Nonetheless, the implementation of deportation laws in the Polish territories that remained under the influence of the Russian Empire was not a straightforward issue. In the early 19th century, the legal system of the Russian Empire assumed the primacy of local law over general Russian law⁵. The above implies that beginning from the Third Partition and in the years following the Congress of Vienna, the Kingdom of Poland had a separate legal system which did not include deportation as a punitive instrument characteristic of Russian legislation. In addition, Article 25 of the Constitution of the Kingdom of Poland guaranteed that no convict would serve the sentence outside of Poland. The Constitution clearly prohibited such solutions⁶, as demonstrated by the Penal Code of 1818, where the list of criminal sanctions did not involve exile⁷.

However, this state of affairs began to change after the fall of the November Uprising, when the Constitution of the Kingdom of Poland was replaced by the Organic Statute of 1832 which marked the beginning of unification processes in the legal system. Despite the fact that Article 1 of the Organic Statute guaranteed the continued existence of Polish legal codes (“civil and criminal”) and other laws, Article 10 stipulated that the key state officials and individuals accused of crimes against the state and the Tsar’s family would be tried according to the laws of the Russian Empire⁸. Therefore, the Organic Statute made the first attempt to introduce, to a limited extent, the Siberian exile system as a specific legal institution. The following turning point came in 1847, when the 1845 Code of Major and Corrective Punitive Practices [*Уложение о наказаниях уголовных и исправительных*] was implemented in Poland. This legal act amended the Polish Penal Code of 1818 and introduced the criminal exile system to Polish law, thus creating a site of memory linking Poland and Siberia in the legal and historical context.

The aim of this article is to present a holistic outline of the legal institution of exile in general. Therefore, Polish people’s attitudes towards the forced implementation of the occupants’ criminal justice system will not be analyzed in this paper. However, this digres-

⁵ G. Smyk, *Zasady wprowadzania i zakres obowiązywania rosyjskich źródeł prawa w Królestwie Polskim po powstaniu styczniowym*, „Studia z Dziejów Państwa i Prawa Polskiego” 2011, No. 14, p. 216.

⁶ Article 25 of the Constitution of the Kingdom of Poland of 27 November 1815 – source: T. Kołodziejczyk, M. Pomianowska, *Konstytucje w Polsce: 1791–1990. Wybór i opracowanie*, Warsaw 1990, pp. 48–56.

⁷ E. Kaczyńska, *Ludzie ukarani. więzienia i system kar w Królestwie Polskim 1815–1914*, Warsaw 1989, pp. 42–46. For more information about the Penal Code of the Kingdom of Poland, refer to: M. Pasztor, *Zagadnienie prawa karnego w kodeksie Stanisława Augusta i kodeksie karzącym Królestwa Polskiego 1818 roku*, „Kwartalnik Historii Nauki i Techniki” 1995, No. 40(3), pp. 105–114.

⁸ Organic Statute of the Kingdom of Poland, Warsaw 1832, http://bc.wbp.lublin.pl/dlibra/docmetadata?id=1911&from=&dirids=1&ver_id=&lp=1&QI=074161D77C122E0B62FBF018F5F44B87-1 (accessed: 2.06.2023).

sion was purposeful (and even necessary) to emphasize the importance and timeliness of research on the Russian Empire's legislative system in Polish scientific literature. This digression also serves as a starting point for analyzing exile in the broad context of shared sites of memory. Nevertheless, this article focuses on the origins of the exile system and its manifestations in various branches of Russia's pre-revolutionary legal system, mainly administrative and criminal law.

It should also be added that the author's attempts to reconstruct the institution of exile do not always fully coincide with the reality of the described phenomenon. In this article, conclusions were drawn based on legal norms that had been in force in the analyzed period, which does not imply that these norms were actually observed. As Henryk Kamiński aptly noted: "The Russians have an infinite number of laws and regulations, many of which have been perfectly drafted, but their only weakness is that they are not applied"⁹. Therefore, this article will examine the formal provisions of Russian laws relating to the exile system, without attempting to analyze whether they were actually observed.

Origin and introduction of the Siberian exile system in the 16th–18th centuries

As aptly noted by Elżbieta Kaczyńska, changes in the law of banishment as a statutory form of punishment can be regarded as the first event that gave rise to the Siberian exile system¹⁰. Banishment had been present in Old Russian law, and it was transformed at the beginning of the Russian Empire's expansion into Siberia and the annexation of Siberian territory in the late 16th century, shortly after the conquest of the Sibir Khanate¹¹. The first references to exile, namely the enforced expulsion of individuals from the center of social and political life in their native land, can be found in the Council Code [*Соборном уложении*], the legal code promulgated by Tsar Alexei I in 1649¹².

For example, Chapter XIX of the Council Code, entitled *Townsmen* [*О посадских людех*], states that serfs and peasants should be flogged and deported to Siberia for leaving their place of residence without permission¹³. However, Chapter XXI entitled *Robbery and Theft Cases* deserves special attention in this context. Although Siberia was not mentioned explicitly as the final destination, the provision stating that offenders should be

⁹ H. Kamiński, *Wspomnienia więźnia*, Wrocław 1977, p. 157.

¹⁰ E. Kaczyńska, *Syberia: największe więzienie świata (1815–1914)*, Warsaw 1991, p. 15.

¹¹ For more information about the annexation of Siberian territories by the Russian Empire, refer to: А.Т. Шашков, *Начало присоединения Сибири*, [in:] idem, *Проблемы истории России*, Jekaterynburg 2003, pp. 24–27, and А.И. Бакшеев, В.В. Филимонов, Д.А. Ноздрин, *Административно-территориальная политика Российской империи в Сибири*, „Гуманитарные, социально-экономические и общественные науки” 2019, No. 4, p. 82.

¹² И.В. Упоров, *Особенности ссылки как вида уголовного наказания в Российской империи на рубеже XVIII–XIX вв.*, [in:] idem, *Сибирская ссылка*, Irkuck 2017, pp. 122–123.

¹³ Б.Ц. Жалсанова, Д.З. Жамбалов, *Правовая регламентация ссылки в Сибирь как уголовного наказания в Российском Государстве в XVII – первой половине XIX в.*, „Власть” 2017, No. 10, p. 141.

deported to border towns (“as indicated by the ruler”) could be construed as the first law introducing exile as a legal institution. This punitive measure could be applied to thieves and robbers after they had been subjected to corporal punishment and served their prison sentence¹⁴. The above validates the observation that deportation was interpreted in the most literal sense – the purpose of exile was to dispose of wrongdoers, rather than to exacerbate their suffering *ex consilio*. Despite the fact that Chapter XXI of the Council Code of 1649 was promulgated to prescribe normative principles in the criminal justice system, it was, in fact, an act of political ideology. Initially, common thieves and robbers did not account for the majority of the exiles. Most of the deported individuals had participated in peasant uprisings or military revolts; they were prisoners of war or persons sentenced to service in penal units on the frontiers of the Russian Empire (including soldiers serving in Cossack military units)¹⁵. In addition, a linguistic analysis of the Council Code indicates that the exile system had been designed primarily to remove socially undesirable individuals “out of the nobility’s sight”¹⁶.

Initially, the exile system had an ambiguous character. Originally designed as a system of punitive sanctions, it was gradually turned into a system of political repression which, beginning from 1669, acquired new features characteristic of administrative law. As of 1669, suspects who had not been officially sentenced by the court could also be exiled, and this provision was introduced as a preventive measure in cases where there was no evidence to sentence the alleged perpetrator¹⁷. This change informally introduced two types of exile in the legal system.

However, in the context of criminal law, it should be noted that exile evolved into a principal punishment and began to be widely applied only during the reign of Tsar Fyodor III Romanov (1676–1682). In an attempt to align Russia’s criminal law with Western standards, in 1679–1680, the Tsar issued a number of decrees reforming the penal system. Torture, dishonorable punishment, and the most brutal types of capital punishment were gradually banned¹⁸. In the context of exile as a legal institution, one of the greatest changes was introduced by the decree of 17 October 1679. The decree banned dismemberment as punishment for theft – instead, criminals and their families were to be deported to agricultural farms in Siberia¹⁹. These reforms were continued by Princess Sophia, the re-

¹⁴ Articles 9, 13 and 16, Chapter XXI of the Council Code, 1649, <http://www.hist.msu.ru/ER/Etext/1649/21.htm> (accessed: 2.06.2023).

¹⁵ Б.Ц. Жалсанова, Д.З. Жамбалов, *op. cit.*, p. 141.

¹⁶ И.В. Калашникова, *Практика политической ссылки на Европейском Севере в XIX – начале XX веков*, [in:] eadem, *Европейский Север в судьбе России*, Wologda 2005, p. 115.

¹⁷ А.П. Саломон, *Ссылка в Сибирь: очерк ее истории и современного положения: для Высочайшей учрежденной комиссии о мероприятиях по отмене ссылки*, Sankt Petersburg 1900, p. 45.

¹⁸ For example, decree No. 772 of 1679.

¹⁹ Полное собрание законов Российской империи – Собрание 1-е. С 1649 по 12 декабря 1825 г., СПб.: Тип. 2-го Отд-ния Собств. Е.И.В. канцелярии, 1830, Vol. 2: 1676–1688 [No. 619–1327], p. 268.

gent of Russia, and Tsar Ivan V. Despite the fact that exile became a principal punishment and an alternative to capital punishment (the most widely advocated type of punishment in the Council Code of 1649) during the reign of Tsar Peter I, torture and dishonorable punishment were reinstated in the same period. For example, the criminals sentenced to forced labor, a practice that became known as *katorga*, had their nostrils cut off²⁰. This solution marked the emergence of a new approach to exile as punishment²¹. Unlike before, undesirable individuals were removed from society not only to promote Russia's economic interests and colonial ambitions; exile became the principal punishment aiming to severely punish the offender by forcing him to perform labor on behalf of the state. Following the promulgation of the royal decrees of 1797 and 1798, criminals were exiled to Siberia, depending on the gravity of the committed offences²².

Exile as an administrative procedure in the 18th and 19th centuries

When the legal prerequisites for forced resettlement to Siberia in the 18th and 19th centuries are analyzed from a broad perspective, it can be concluded that exile was never only a punishment for a committed crime that was applied with due process of law. This observation is validated not only by an analysis of Russia's legislative system and the institution of exile in the discussed period, but also by the Empire's colonization policy which led to highly unfavorable changes in legal regulations addressing social and political issues²³. According to Elżbieta Kaczyńska, despite the fact that Siberia was a resource that could increase Russia's economic potential and further its colonial ambitions, the region was regarded as a "vast prison without a roof"²⁴, where antisocial, hostile, and unwanted individuals, including political enemies, could be exiled²⁵.

The fact that deportation to Siberia could resolve a number of social and political problems implied that exile was regarded not only as a measure of the criminal justice system, which explains why the institution of exile was introduced as an administrative procedure. This procedure legalized the almost unconditional resettlement of the popu-

²⁰ И.В. Упоров, „...Быть им на каторгах в работе”. Формирование государственной политики по эксплуатации труда осужденных при Петре I, <https://interactive-plus.ru/e-articles/249/Action249-17786.pdf> (accessed: 2.06.2023).

²¹ Convicts were initially exiled to Azov.

²² И.В. Упоров, *Особенности ссылки...*, pp. 123–124.

²³ Cf. А.М. Хламова, *Уголовная ссылка в Сибирь в представлениях власти и общества Российской империи второй половины XIX в.: основные итоги изучения*, [in:] *Исторические исследования в Сибири: проблемы и перспективы*, Nowosybirsk 2010, p. 111.

²⁴ E. Kaczyńska, *Syberia: największe...*, p. 5.

²⁵ Russian historians have been long embroiled in a debate on whether Siberia was a Russian colony, a subordinate state such as Poland and Finland, or an integral part of the empire; cf. А.Б. Панченко, „Сибирь” или „азиатская Россия” – областничество между имперским и национальным дискурсами, *„Studia Culturae”* 2016, No. 1(27), pp. 49–59.

lation for preventive and political reasons, and to cater to the Russian Empire's colonial ambitions. Forced deportation also promoted the "integration of Siberia within the Russian Empire", which was much desired by the central authorities²⁶.

In historical records, the first references to exile as an administrative procedure date back to the 16th and 17th centuries, including in the story of protopope Avvakum Petrov who was deported to Siberia for opposing the reform of the Orthodox Church²⁷. Despite the above, the first legal regulations sanctioning the institution of exile as a new and non-punitive measure were introduced only in the 18th century. In the past, individuals could be sentenced to exile only by the autocratic monarch whose verdicts were based on a set of clearly defined rules²⁸. The new regulations transferred this privilege from the monarch, whose will constituted the law of the Russian Empire²⁹, to other entities, and exile as an administrative procedure was transformed into a legal institution. The entities authorized to pass such decisions and the legal prerequisites for deportation became codified. This privilege was granted to landlords who had had the authority to exile serfs to Siberia already in 1760 (this right was revoked upon the emancipation reform of 1861)³⁰.

Before moving to the analysis of the above legal sources in the historical context, it should be noted that the reports compiled by Alexander Petrovich Solomon, the Head of the Main Prison Administration³¹, constitute a highly valuable resource for historians despite the fact that have been rarely analyzed in Polish scientific literature. Solomon's reports provide a detailed account of the history of Siberian exile and the prisoners' life in Siberia³². These documents indicate that the first legal regulations enabling feudal rulers to deport serfs without a trial had been introduced already by the decree of 7 January 1736, i.e. before 1760. The decree authorized factory owners to exile workers who were unwilling to perform their duties and were, therefore, living "unnecessary lives"³³.

²⁶ Z. Popova, *Exile as imperial practice: Western Siberia and the Russian Empire (1879–1900)*, „International Review for Social History” 2018, No. 63(3), pp. 131–150.

²⁷ А.А. Иванов, *Сибирская политическая ссылка XVII–начала XX в. в исследованиях современников*, Irkuck 2013, p. 5.

²⁸ G. Smyk, *Źródła prawa administracyjnego w cesarstwie rosyjskim*, „Studia z Dziejów Państwa i Prawa Polskiego” 2010, No. 13, pp. 129–135. For more information about the Russian legal system as an emanation of the Tsar's will, refer to: Article 1 of Основных государственных законов Российской Империи.

²⁹ G. Smyk, *Źródła prawa...*, p. 130.

³⁰ Cf. А.Н. Долгих, *Ссылка крестьян на поселение в Сибирь по воле помещиков в законодательстве Российской империи*, „Российская история” 2013, No. 3, pp. 74–84.

³¹ *Альманах современных русских государственных деятелей*, изд. Германа Александровича Гольдберга, Sankt Petersburg 1897, p. 1198.

³² Solomon's lecture entitled *Тюремное дело в России* was published in 1898. Solomon also conducted research on Arabic and Dante's works, and he received the Pushkin Gold Medal from the Russian Academy of Sciences for his accomplishments.

³³ Полное собрание законов Российской империи – Собрание 1-е. С 1649 по 12 декабря 1825 г., СПб.: Тип. 2-го Отд-ния Собств. Е.И.В. канцелярии, 1830, Vol. 9: 1733–1736 [No. 6294–7142], p. 710.

The decree of 13 December 1760³⁴ entitled the landed gentry to deport serfs for immoral conduct or unwillingness to work, excluding those who were older than 45 or were incapacitated³⁵. Despite the fact that exile to Siberia emerged as a non-punitive administrative procedure in the Russian legislative system, it was guided by specific objectives, mainly the colonization of wasteland in Siberian governorates³⁶. At the same time, this initiative created many opportunities for illegal conduct and enabled communities to dispose of unproductive members who were dependent on society, which compromised the Empire's colonization policy. Due to a high number of legal violations, in 1787, the authorities passed a decree stating that only able-bodied workers could be relocated to Siberia³⁷. As a result, the number of people who were exiled by administrative procedure decreased in favor of military conscripts³⁸.

In 1799, recognizing the opportunity to colonize the Transbaikal region, Tsar issued another decree that reinstated the provisions of the 1760 decree. As a result, Russians could be deported without a reason, on condition that the exile would not separate or break up families³⁹. The first attempts to repeal this law were made by Alexander I in 1802, but his efforts were unsuccessful⁴⁰. Landowners continued to exploit these regulations, which led to the restoration of old privileges. These privileges were upheld by the Digest of Laws of the Russian Empire, with a two-year *vacatio legis* announced in 1833. They remained in force until the last code of laws before the emancipation reform was published in 1857.

Volume XIV of the revised edition of the Digest of Laws of the Russian Empire (published in 1857) contains the Act on Combating and Preventing Crime [*Устав о предупреждении и пресечении преступлений*], which regulates exile as an administrative procedure and deserves special attention in the analyzed context. The act was the first legal regulation in the world that dealt comprehensively with crime prevention⁴¹. Article 396 of the above act stated that landowners had the right to permanently expel peasants guilty of insolent or depraved behavior, and hand them over to the governorate authorities⁴². In addition, the authorities had no right to inquire into the reasons for the

³⁴ А.П. Саломон, *op. cit.*, pp. 46–47.

³⁵ *Ibidem*.

³⁶ *Ibidem*.

³⁷ *Ibidem*, p. 48.

³⁸ *Ibidem*, p. 49.

³⁹ *Ibidem*.

⁴⁰ *Ibidem*, pp. 49–51 and Полное собрание законов Российской империи – Собрание 1-е. С 1649 по 12 декабря 1825 г., СПб.: Тип. 2-го Отд-ния Собств. Е.И.В. канцелярии, 1830, Vol. 27: 1802–1803 [No. 20099–21111], pp. 23–24.

⁴¹ Cf. M. Arsoba, *Rosyjska myśl kryminologiczna w XIX wieku*, „Forum Polityki Kryminalnej” 2022, pp. 7–8.

⁴² Ст. 335 Устава о предупреждении и пресечении преступлений, Свод законов Российской Империи Vol. 14, Sankt Petersburg 1857, p. 64.

landowner's dissatisfaction. The authorities were obliged to hand the serf over to the military or, if the offender was not fit for service, to relocate him to Siberia pursuant to the provisions of Article 399 of the same Act. These provisions did not apply to peasants who were: 1) older than 50, 2) infirm, or 3) disabled, unless they were not accepted by the landowner after serving a sentence for their crimes. Before handing the serf over to the governorate authorities, the landowner was required to present the Marshal of Nobility and the land court with evidence that the serf was bound to his land and was not infirm. The landowner was also required to provide information about the serf's marital status and children, and to confirm that neither the serf nor his children were being prosecuted or had been bailed out by the landowner.

The above provisions did not apply to individuals who were not bound to landed property, including urban residents and peasants working on state-owned land, and the legal prerequisites for deporting non-serfs also deserve closer attention. Pursuant to the provisions of the Act on Combating and Preventing Crime, communities could, by way of a two-thirds majority vote, expel members who: 1) were suspected of a crime punishable by deprivation of civil rights, 2) had served a prison sentence in penal military units [*арестантские роты*], 3) had been sentenced to corrective punishment [*исправительное наказание*] three times, and 4) were guilty of depraved behavior⁴³. For the community's decision to take legal effect, it had to be approved by the authorities of the governorate (in case of urban residents) or the State Property Board (in case of peasants employed by the state). In addition, Article 329 of the Act on Combating and Preventing Crime established an exception to the above rule, whereby the governorate authorities could deport citizens without a community vote if the reasons for their decision were approved by a minister of the imperial court.

It is worth noting that although serfdom was abolished by the emancipation reform of 1861, peasants did not become independent of their communities that became the sole decision-making bodies in matters relating to deportation. In the 1860s, exile to Siberia became the only administrative penalty after the regulations concerning military service had been amended, and the military ceased to be an instrument of repression for depraved individuals. New administrative laws were introduced after the emancipation reform, and peasants were free to resettle. These changes initiated "waves of migration from European Russia to Asiatic Russia" which were not associated with legal sanctions⁴⁴. One of the legal acts concerning deportations was the decree of 14 July 1889 on the voluntary resettlement of rural and urban residents to state-owned land [*О добровольном переселении сельских обывателей и мещан на казенные земли*]⁴⁵.

⁴³ Article 334 of the Act on Combating and Preventing Crime.

⁴⁴ S. Leończyk, *Polskie osady włościańskie na Syberii na przełomie XIX–XX wieku. Historia. Sytuacja obecna*, „Humaniora” 2017, No. 1(17), pp. 29–31.

⁴⁵ Digest of Laws of the Russian Empire, Vol. IX, No. 6198, covering the years 1881–1913.

Institution of exile in the criminal justice system in the 19th century

As a legal institution, exile to Siberia emerged as the most important instrument in the criminal justice system. This observation is supported not only by the highest number of regulations or the complexity of legal provisions describing deportation proceedings, but also by the fact that compulsory resettlement was the cornerstone of the Russian criminal justice system⁴⁶. The legal institution of exile was implemented in the first half of the 19th century which witnessed revolutionary changes in the Russian legal system⁴⁷, leading to the creation of a comprehensive body of regulations, where exile was prescribed as a punitive measure. These regulations were largely based on 1) the first penal code of 1845 which had been incorporated into volume XV of the Digest of Laws of the Russian Empire, and 2) the Act on Exiles which had been introduced during Mikhail Speransky's Siberian reform of 1822 and implemented the provisions of the executive penal code, as it would be called today⁴⁸.

The fact that the institution of exile had a narrow definition until the 1820s is also an important consideration when analyzing the statutory classification of legal offences in the criminal justice system. Temporary exile and exile for life were the only two types of punishment involving deportation. The first law to prescribe a more detailed classification of exile as a punitive measure was the Act on Exiles which differentiated between two types of deportation: *katorga* and exile to settlement⁴⁹. Detailed regulations were introduced by the decree of 4 January 1839 which distinguished between deportation sentences that were and were not associated with the loss of civil rights. This decree significantly modified the provisions of the code of laws of 1832⁵⁰. Ultimately, the Code of Major and Corrective Punitive Practices of 1845 introduced three types of deportation sentences to the criminal justice system⁵¹: 1) *katorga* [*каторга*], 2) exile to settlement [*ссылка на поселение*], and 3) exile for life [*ссылка на житье*] as a corrective penalty relative to the first two categories which were major punishment. In historiography, *katorga* has been defined as “deprivation of all rights and deportation to a labor camp”⁵². According to Article 4 of the Act on Exiles, individuals sentenced to *katorga* became laborers in Siberian mines and factories⁵³. According to the list of major penalties prescribed by Article 19 of

⁴⁶ А.М. Хламова, *op. cit.*, pp. 111 and 113.

⁴⁷ Cf. О.В. Степанова, *Развитие института ссылки в России в XIX веке*, „Известия ПГПУ им. В.Г. Беллинского – гуманитарные науки” 2009, No. 11(15), pp. 135–137.

⁴⁸ *Ibidem*.

⁴⁹ В. Архипов, *Устав о ссыльных 1822 г. как источник пенитенциарного права и его роль в реализации колонизационной политики России в XIX в.*, „Вестник Сьюн” 2015, Vol. 2, pp. 14–15.

⁵⁰ Полное собрание законов Российской империи – Собрание 2-е. С декабря 1825 по 28 февраля 1881 г., СПб.: Тип. 2-го Отд-ния Собств. Е.И.В. канцелярии, 1840, Vol. XIV [No. 11909–13043], p. 6.

⁵¹ Article 19 of the Code of Major and Corrective Punitive Practices of the Kingdom of Poland.

⁵² *Ibidem*.

⁵³ Article 4 of the Act on Exiles. The cited regulations can be found in the 1890 edition of the act, edited by I. Sementovskiy, assistant to the Saratov Governor.

the Code of Major and Corrective Punitive Practices, *katorga* was the second most severe penalty after capital punishment in the Russian Empire⁵⁴. However, for a long time, the severity of *katorga* was determined by the convict's social status. This was particularly noticeable until 1863⁵⁵ when *katorga* was inseparable from corporal punishment, which was inflicted on all offenders who were not exempt from it. Before deportation, the members of the lowest social classes were branded with the "KAT" badge of shame⁵⁶ and sentenced to 80 to 200 lashes, depending on the gravity of their crimes.

The regulations on civil forfeiture were also an integral part of the system of major penalties, including *katorga*. The offenders were deprived of all rights, including social rights⁵⁷, privileges, honorary titles⁵⁸, familial rights, and property rights. Based on inheritance laws, property was transferred to the legal successor as of the date a binding court sentence was issued and promulgated. The only exception was cash which could be deposited with the authorities and reclaimed after serving the sentence⁵⁹. The loss of familial rights released the convict from familial bonds and was one of the three legally justified reasons for the annulment of marriage⁶⁰. In addition, the convict was deprived of parental authority and other rights based on affinity or kinship. These rights could be retained if the spouse was exiled together with the offender.

The severity of penal labor and the extent to which the convict was deprived of civil rights were determined by the type and gravity of the committed crime⁶¹. In the penal code, crimes were graded into seven categories which determined the duration and type of penal labor, as well as the severity of corporal punishment. However, for the sake of simplicity, the executive criminal law regulations the provisions of the Act on Exiles listed only three categories: 1) third-degree offenders were sentenced to 4–8 years of penal labor, 2) second-degree offenders were sentenced to at least 8–12 of penal labor, and 3) first-degree offenders were sentenced to at least 12 years of labor or lifelong exile. This classification was introduced based on executive criminal law regulations which

⁵⁴ Article 19 of the Code of Major and Corrective Punitive Practices, complete edition, Vol. 2, No. 19283; Article 19 of the Code of Major and Corrective Punitive Practices, 1857 edition, and Article 17 of the Code of Major and Corrective Punitive Practices, 1885 edition.

⁵⁵ Corporal punishment was generally abolished by the decree of 17 April 1863 (No. 39504).

⁵⁶ The abbreviation "KAT" refers to the Russian word *каторжник* (prisoner exiled to *katorga*), and the badge was placed on the left shoulder blade. Badges were not applied in prisoners older than 70, members of the upper classes, and women. During the reign of Peter I, these letters were branded on the convict's forehead with a hot iron. Ashes were rubbed into the wound, and the convict's nostrils were sliced off.

⁵⁷ Article 24 of the Code of Major and Corrective Punitive Practices.

⁵⁸ Article 25 of the Code of Major and Corrective Punitive Practices.

⁵⁹ Articles 286–296 of the Act on Exiles.

⁶⁰ О.Ю. Яненко, *Расторжение брака в Российской Империи*, „Вестник ЮУрГУ – Социально-гуманитарные науки” 2013, Vol. 13(1), p. 193.

⁶¹ Article 21 the Code of Major and Corrective Punitive Practices.

contained standard procedures for transporting convicts and detailed guidelines relating to the type and severity of penal labor.

An analysis of executive criminal law regulations indicates that a labor camp sentence was divided into several stages: 1) enforcement of judgement, 2) transport to Siberia, 3) internal transport to a specific destination in Siberia, 4) hard labor over a period indicated in the sentence, and 5) permanent settlement in Siberia. These proceedings were initiated by the governorate authorities which were tasked with preparing the relevant documentation⁶², providing convicts with suitable clothing and a sum money to buy food in the first stage of transport, and dividing convicts into groups that were dispatched to Siberia up to once a week⁶³. Governorates also had to submit reports on the initiation of deportation proceedings to the Tobolsk Office of Exiles [*Тобольского приказа о ссыльных*], which was created in 1882 as the central outpost for distributing laborers throughout Siberia⁶⁴. The governorates' responsibilities and oversight ended as of the moment the convicts were handed over to municipal or rural police who supervised boarding operations. Prisoners were dispatched to Tobolsk in groups, and they were placed under direct supervision of the Tobolsk Office of Exile which was relocated to Tyumen in 1869⁶⁵.

After the convicts had arrived in Tobolsk (Tyumen after 1896), their documents were processed, and they were divided into new groups based on the following rules: 1) first-degree offenders were transported to mines in Petrovsky Zavod or the Nerchinsk Mining District, 2) second-degree offenders were dispatched to Ust-Kamenogorsk or Primorye Governorate-General⁶⁶, and 3) third-degree offenders were transported to factories in Irkutsk or Yenisey governorates⁶⁷. Women were grouped separately and dispatched only to factories in eastern Siberia or Primorye because Article 5 of the Act on Exiles prohibited female labor in mines. The law also prohibited second- and third-degree convicts from working in underground mines. As regards transport regulations, the Act on Exiles stated that convicts were to be placed under strict supervision during the last leg of the journey in Siberia, i.e. between Tobolsk and the final destination. The rules of transport were set out in a separate chapter (Stages of Siberian Transport) of the Act on Exiles. During transport on the territory of Siberia, convicts were supervised by special security convoys to ensure that the same number of prisoners boarded and left the means of

⁶² Article 16 point 1 of the Act on Exiles.

⁶³ Article 41 of the Act on Exiles.

⁶⁴ Article 16 of the Act on Exiles.

⁶⁵ В. Архипов, *op. cit.*, pp. 14–15 and Article 126 of the Act on Exiles.

⁶⁶ The governorate-general was an administrative unit in the Russian Empire that was generally composed of two or three governorates in frontier regions.

⁶⁷ Articles 257 and 258 of the Act on Exiles – Russian courts were not authorized to decide on the place of exile in Siberia. This decision could be made exclusively by the Tobolsk Office of Exiles.

transport in the final destination. Male and female convicts were dispatched from Tobolsk in separate groups of only 50–60 persons each. Prisoners with different sentences could not be transported together. The convoys needed two days to cover the distance between labor camps and permanent settlement camps⁶⁸. Article 313 of the above chapter contains an interesting piece of information stating that “over the years, experience has shown that Siberian exiles are more likely to escape during the summer; therefore, convicts should be transported in smaller groups”⁶⁹.

Convicts were not allowed to own clothes. They were provided with clothing for the duration of travel, and badges were sewn onto their clothes to identify prisoners who had committed various crimes. Upon arrival at the final destination (both in Europe and Siberia) convicts had their legs cuffed, and first-degree offenders were also required to wear hand cuffs⁷⁰. Cuffs were not removed during the entire period of probation (as a form of punishment) which lasted: 1) 8 years for prisoners sentenced to lifelong exile, 2) 4 years for prisoners sentenced to 15 to 25 years, 3) 2 years for prisoners sentenced to 12 to 15 years and for third-degree offenders, 4) 1.5 years for prisoners sentenced to 6 to 8 years, and 5) 1 year for prisoners sentenced to 4 to 6 years. A convict’s conduct was evaluated after probation, and if the prisoner was deemed to have been “rehabilitated”, he was separated from the “shackled” group. These convicts could also request permission to reside outside the correctional facility. The money deposited by the convict before the exile was returned.

According to the law, convicts had to work until the end of the term specified in the sentence or until they were deemed unfit for work⁷¹. Having served their sentence, they were no longer required to perform hard labor and were resettled to remote regions of Siberia or places in the vicinity of labor camps. Pursuant to the provisions of Article 595 of the Act on Exiles, those who were incapacitated and unfit for work were imprisoned for an additional term of 3 years, depending on the severity of their crimes⁷². Interestingly, prisoners sentenced to lifelong exile could apply for conditional early release after 20 years, and their plea had to be approved by the authorities of Eastern Siberia⁷³.

Exile to settlement was yet another category of punishment in the Siberian exile system that was placed on the list of major penalties in Article 19 of the Code of Major and Corrective Punitive Practices. Similarly to prisoners exiled to *katorga*, convicts sentenced to exile to settlement were deprived of civil rights and subjected to 40 to 80 lashes, excluding prisoners who were not exempt from corporal punishment. The provisions of

⁶⁸ Article 315 of the Act on Exiles.

⁶⁹ Articles 313 and 556 of the Act on Exiles.

⁷⁰ Articles 347 and 96 of the Act on Exiles.

⁷¹ Article 592 of the Act on Exiles.

⁷² Article 602 of the Act on Exiles.

⁷³ *Ibidem*.

the Act on Exiles introduced the greatest differences in the severity of punishment inflicted on members of different social classes. Prisoners of privileged origin were not only exempt from corporal punishment and stigmatization, but also from four years of penal labor in industrial plants in Tobolsk or Tomsk governorates or in other labor camps designated by the authorities⁷⁴.

Colonization was the final stage of both exile to settlement and *katorga*. Prisoners had to settle permanently in Siberia, but colonization did not imply that the convict's sentence had expired. The sentence was officially terminated only after a prisoner had settled in a local peasant community. A convict could apply for termination only 10 years after settlement, and prisoners who had been degraded to the status of peasants were not prohibited from moving to urban areas. Russian legislators had anticipated that not all exiles would have the skills required for agricultural work. Pursuant to the provisions of Article 735 of the Act on Exiles, exiles were allowed to settle in cities and find employment in crafts or industry, but they were prohibited from changing their social status (from peasant to burgher) or applying for membership in trade guilds. Some convicts were transported to existing villages or unoccupied territories to establish new settlements on state-owned land⁷⁵.

Exile for life was the last type of exile in the criminal justice system that was introduced already by the decree of 1839. Convicts sentenced to lifelong exile were not deprived of their assets. However, their social status was degraded to that of a peasant or a burgher. Having arrived at their destination, these prisoners remained under police supervision, and they were allowed to apply for membership in a trade guild after four years. According to the Code of Major and Corrective Punitive Practices, before 1845, exile for life was a corrective punishment that was reserved for members of upper social classes who were exempt from corporal punishment. In contrast, the equivalent punishment for the less privileged classes was hard labor in penal military units [*арестантские роты*], combined with corporal punishment or confinement in the workhouse. Exile for life was legally sanctioned by Article 34 of the Code of Major and Corrective Punitive Practices, and it was divided into five categories. Prisoners belonging to the first two categories were deported to more remote governorates, such as Irkutsk and Yenisey, whereas those belonging to the remaining categories were exiled to Tomsk or Tobolsk⁷⁶. Prisoners sentenced to exile for life could also be isolated for up to four years in a penitentiary facility and prevented from traveling to other Siberian governorates, depending on their respective category⁷⁷. These individuals were deprived of special rights, including social rights and privileges, dignity, medals, honorary titles, the right to hold public office, the right of

⁷⁴ Article 67 of the Act on Exiles.

⁷⁵ Article 730 of the Act on Exiles.

⁷⁶ Article 35 the Code of Major and Corrective Punitive Practices.

⁷⁷ *Ibidem*.

employment in civil service, the right to conduct commercial activities, and the right to act as witness in legal proceedings⁷⁸.

Conclusions

In conclusion, the legal institution of exile to Siberia, whose origin can be traced back to the 17th century, permeated various branches of Russian law in the 19th century and constituted an important set of regulations guiding the Russian Empire's criminal justice system and colonization policy. As an administrative sanction, the punishment of exile provided the authorities with almost unlimited possibilities for resettling dependent populations and eliminating individuals who did not respect social norms, even those who had not committed a criminal offence. In turn, exile as a legal institution was introduced as punishment for a specific crime, and deported convicts were deprived of all civil rights and sentenced to penal labor in Siberia. However, Russia's autocratic rulers had the sole authority to decide on the legitimacy of exile laws, and these autocrats delegated some of the powers to courts, landowners, local authorities, and rural communities on the terms stipulated in the analyzed legal acts.

The following conclusions can be formulated based on the core findings of this study:

1. Exile to Siberia had emerged as a modified version of the penalty of banishment in Old Russian law.
2. The Council Code promulgated by Tsar Alexei I in 1649 was the first legal act to make a direct reference to the punishment of exile.
3. Initially, exile to Siberia was not a punishment in the strict sense, but only a punitive measure.
4. The legal institution of exile existed also outside the criminal justice system.
5. In the 18th century, convicts could be sentenced to exile under an administrative procedure.
6. Administrative exile was regulated by the provisions of the Act on Combating and Preventing Crime.
7. Exile was a major punitive measure in the criminal justice system of the Russian Empire.
8. The Act on Exiles was a legislative document implementing the provisions of the executive criminal law.
9. The Russian penal code made a distinction between three types of exile: *katorga*, exile to settlement, and exile for life.
10. The severity of exile as a punitive measure differed subject to the convict's social status.

⁷⁸ Article 46 the Code of Major and Corrective Punitive Practices.

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Exile as a legal institution in the Russian Empire

Summary: This article analyzes the Siberian exile system as a specific legal institution in pre-revolutionary Russia. The legal aspects of exile on Russian territories were explored by examining the origins of the deportation system and its presence in various branches of Russian law, primarily administrative and criminal law. Selected legal norms were also examined to shed light on the legal grounds for deporta-

tions to Siberia and the terms on which convicts served their sentence. The entities authorized to initiate deportation proceedings were identified, and differences in these procedures were described. Legal acts and regulations enabling landowners, rural and urban communities, or criminal courts to initiate deportation proceedings were analyzed.

Keywords: history of law, legal institution, exile, Siberia

Die Deportation als Rechtsinstrument im Russischen Reich

Zusammenfassung: Der Beitrag stellt die Institution der Deportation nach Sibirien als eine besondere Rechtskonstruktion im vorrevolutionären Russland dar. Der Autor versucht, das Thema der Rechtskonstitution der Deportation in den russischen Territorien nahezubringen, wobei er sich darauf konzentriert, die Genese der besagten Institution und ihre Materialisierung in verschiedenen Zweigen des russischen Rechts, vor allem des Verwaltungs- und Strafrechts, zu skizzieren. Darüber hinaus werden ausgewählte Rechtsnormen analysiert, wobei die Frage der Voraussetzungen für die Vollstreckung der Deportation und die Regeln für die Verbüßung von Deportationsurteilen näher beleuchtet werden. Außerdem werden die zur Einleitung einer Abschiebung nach Sibirien gesetzlich bevollmächtigten Stellen genannt und die Unterschiede in den von ihnen durchzuführenden Verfahren beschrieben. Mit anderen Worten, es wird aufgezeigt, auf der Grundlage welcher Rechtsakte oder Vorschriften eine Deportation durchgeführt werden konnte: durch die Entscheidung eines Gutsbesitzers, durch den Beschluss einer Dorf- oder Stadtgemeinschaft oder durch das Urteil eines Strafgerichts.

Schlüsselwörter: Rechtsgeschichte, Rechtsinstitution, Exil, Sibirien

Zsyłka jako instytucja prawna w Imperium Rosyjskim

Streszczenie: Artykuł przedstawia instytucję zesłania na Syberię jako szczególną konstrukcję prawną w przedrewolucyjnej Rosji. Autor pragnie przybliżyć tematykę prawnego ukonstytuowania zesłań na terenach rosyjskich, skupiając się na zarysowaniu genezy danej instytucji oraz jej materializacji w różnych gałęziach prawa rosyjskiego, głównie administracyjnego oraz karnego. Ponadto przeprowadzono analizę wybranych norm prawnych, przybliżającą zagadnienie przesłanek do wykonania zesłania oraz zasad odbywania kar deportacyjnych. Wskazano również podmioty uprawnione, delegacją ustawową do inicjacji zsyłek na Sybir wraz z opisaniem różnic w postępowaniu przed każdym z nich, innymi słowy na podstawie jakiego aktu prawnego lub regulacji zesłanie mogło dokonywać się za pośrednictwem: decyzji właściciela ziemskiego, orzeczenia wspólnoty wiejskiej lub miejskiej, czy też wyroku sądu karnego.

Słowa kluczowe: historia prawa, instytucja prawa, zesłanie, Syberia

