



## Some Issues in the Work of Probation Inspectorates Related to the Execution of Sentences in the Form of Correctional Labor

**LEONID N. TARABUEV**

Vologda Institute of Law and Economics of FSIN Russia, Vologda, Russian Federation

ORCID: <https://orcid.org/0000-0003-3372-9810>, e-mail: tarabuev@list.ru

**Abstract.** *Introduction:* we use the analysis of official data and the results of our own research to identify major issues in the work of probation inspectorates aimed at executing penalties in the form of correctional labor. *Aim:* taking into account current practice of execution of punishment in the form of correctional labor, we formulate some organizational and legal proposals for supporting the activities of probation inspectorates, aimed at improving the effectiveness of execution of this type of punishment. *Methods:* generalization, comparison, dialectical-materialistic theory of knowledge, questionnaire survey, expert assessment, statistical analysis, comparative-legal method. *Results:* our proposals for changing the current legislation will help to enhance the performance of probation inspectorates in their work related to the execution of sentences in the form of correctional labor as a real and in-demand alternative to incarceration. *Conclusions:* main reasons for insufficient labor involvement of convicts sentenced to correctional works are as follows: probation inspectorates and territorial bodies of the Federal Penitentiary Service of Russia do not conduct effective preliminary work that would help to create favorable working conditions for the convicts in this category; cooperation of probation inspectorates with municipal authorities at various levels and with regional state authorities is at a low level; as a result, convicts cannot be brought to work in full; there is no legal mechanism to encourage employers to provide jobs to convicts; regional state authorities have yet to introduce appropriate changes to regional legislation so as to reduce the tax on profits of enterprises and organizations that provide jobs for those sentenced to correctional labor; probation inspectorates staff lack initiative with regard to employment quotas in institutions where prisoners work; the personality of a convicted person who is prone to committing crimes and other offenses has not been studied thoroughly. It is obvious that there is a need to develop a mechanism for legal regulation of the functioning of probation inspectorates in the field of execution of sentences in the form of correctional labor.

**Keywords:** probation inspectorate; correctional labor; convict; engagement in labor; quotas; tax benefits; interaction.

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### *Introduction*<sup>1</sup>

The relevance of the research topic considered in our paper is due to the need to bring the functioning of probation inspectorates (hereinafter – PIs) in line with the international and European standards that provide for the legality in the execution of sentences by organizational and legal means. Thus, the scope of application of non-custodial sentences is being expanded

in order to optimize the system of criminal penalties, taking into account the extent of public danger of crimes, the personality of the convict and the need to minimize negative implications of incarceration.

Correctional labor is one of the types of non-custodial punishments. It is applied so as to reduce the total number of persons held in correctional institutions, and it gives citizens who have committed crimes for the first time the opportunity to rehabilitate without incarceration. According to A.A. Ustinov, obvious advantages of the punishment under consideration are as

<sup>1</sup>The article is based on the materials of the author’s Candidate of Sciences (Law) dissertation “Organization and legal basis of the activities of probation inspectorates in the field of execution of sentences in the form of correctional labor”. It is published for the first time.

follows: the ability to preserve or improve the convict's labor skills; economic benefits in the form of financial contributions to the budget; instilling and maintaining labor discipline; preservation of the convict's social connections, the ability to maintain contacts with relatives, marry, raise children, and engage in other socializing activities; absence of negative influence of convicts who are carriers of the criminal subculture, and a much lower degree of the convict's social stigmatization in comparison with incarceration [19, p.338].

The implementation of such an alternative type of punishment as correctional labor is a promising direction for penal policy, which fits smoothly into its humanistic framework [14, p. 121].

Practice shows that this type of punishment is one of the most commonly used in the Russian Federation. This is evidenced by the data of judicial statistics: in 2010, 41,282 people were sentenced to correctional labor, in 2011 – 40,037, in 2012 – 70,400, in 2013 – 75,902, in 2014 – 75,120, in 2015 – 60,794, in 2016 – 51,689, in 2017 – 54,753, in 2018 – 54,747, in 2019 – 50,020. Other widely used types of punishment, as of 2019, are as follows: incarceration – 175 122 people, compulsory labor – 99 652, fine – 74,752, restriction of liberty – 20,420 [3]. Thus, for a fairly long period of time, the indicator of imposing sentences in the form of correctional labor remains consistently high; and by the end of 2019 it ranked fourth among all criminal penalties.

A significant increase in the number of persons sentenced to correctional labor and registered with probation inspectorates occurred after the adoption of Federal Law 420-FZ of December 7, 2011 "On amendments to the Criminal Code of the Russian Federation and certain legislative acts of the Russian Federation" [8], which changed the content of the sentence under consideration. It began to be assigned both to persons who had the main place of work before the conviction, and to those who did not have one.

Courts have not responded adequately to these amendments, especially in cases where the punishment was administered to individuals who had not have a job before the conviction, and the punishment was expected to be served in areas where the convicted person had not resided prior to the court sentence. Thus, in a number of cases, courts assigned correctional labor to persons who do not have an official place of work, or to persons who did not have a permanent place of work for a long time and,

accordingly, did not have a source of income for various reasons (lack of desire to work, alcohol dependence).

Official nationwide statistics of the Federal Penitentiary Service of Russia (hereinafter referred to as FSIN Russia) show the level of involvement of convicts to serve correctional labor within 99% of the total number of persons sentenced to correctional labor. However, such a high rate is not typical for all inspectorates of the territorial bodies of FSIN Russia. According to D.V. Kosolapova, the employment of those sentenced to correctional labor is extremely poorly organized in the Republic of Adygea, Republic of Crimea and the city of Sevastopol, the Belgorod, Tambov, and Magadan oblasts [6].

It is appropriate to note the recent growth in the indicator showing the non-involvement of convicts in correctional labor in the period specified by law: for example, in 2015, according to a summary report on the work of PIs for 2015–2019, the indicator was 73.22, in 2016 – 72.93, in 2017 – 98.26 in 2018 – 151.36, in 2019 – 236.93.

#### *Some issues related to the employment of persons sentenced to correctional labor*

Employment of persons sentenced to correctional labor who do not have the main place of work is possible only at enterprises, institutions and organizations determined by the municipal authorities and agreed upon with the inspectorate, and only at the place of residence of the convict. According to official data, there are not enough such vacancies in municipal enterprises, organizations and institutions, since they are gradually reduced due to the reorganization of housing and communal services, as well as due to the fact that these bodies are required to find additional jobs for another category of persons – those sentenced to compulsory work. In this regard, even one manages to find a job, it will be low-paid. It is noted that in enterprises of a different form of ownership, the employment of persons of this category is also problematic because relations with enterprises, institutions and organizations that are not municipal are built on a contractual basis, that is, the conclusion of a corresponding contract with the management of the organization is required.

Thus, engaging convicts in labor remains the main difficulty in the work of PIs aimed at organizing the execution of the punishment under consideration. This is due to the fact that current organizational and legal framework for the functioning of PIs aimed at engaging per-

sons sentenced to correctional labor in work can hardly be considered sufficiently effective [21, p. 3].

Lack of a job, lack of means of subsistence, inability to fulfill the obligation imposed by the court and compensate for the material damage caused, the need to pay alimony and taxes – these are the main reasons leading to the commission of new crimes [16, p. 437].

In the period from 2014 to 2018, as part of our dissertation research, we surveyed 1,172 employees and senior staff of the PI of the Northwestern, Central, Far Eastern and Southern federal districts. Seventy percent of respondents indicated that enterprises heads refuse to hire this category of convicts, because they do not lack personnel and are not interested in finding employment for people who in most cases do not have the appropriate skills and have a negative attitude toward work [18, p. 57], as well as due to the fact that the administration of organizations in this case will be assigned certain additional duties, for the non-performance of which one or another type of responsibility is provided.

We see a way out of this situation in working out the issues concerning job quotas in enterprises and organizations for persons sentenced to correctional labor. At the regional level, the relevant legislative initiatives were not supported. The main reasons for this situation lie, first of all, in the flaws in federal and local legislation, which is confirmed by the survey data: more than 65% of respondents indicated this fact. It was often due to the fact that, in accordance with Part 1 of Article 39 of the RF Penal Enforcement Code, jobs for serving punishment in the form of correctional labor are determined at the place of residence of the convict by local authorities in coordination with PIs; it is also due to the fact that, in accordance with Part 3 of Article 3 of Federal Law 1032-1 of April 19, 1991 “On employment in the Russian Federation” [9] persons convicted by a court decision to correctional labor cannot be considered unemployed.

Article 5 of the above-mentioned law stipulates that the state policy in the field of promoting employment is aimed at implementing measures that promote the employment of citizens who are experiencing difficulties in finding a job, which include persons released from correctional institutions. This article also involves encouraging employers to maintain existing and create new jobs, primarily for citi-

zens who are experiencing difficulties in finding one. We suggest that the latter should include convicts serving sentences in the form of correctional labor, and thus we may get closer to solving the problems related to their mandatory employment. The issue concerning the measures to encourage employers, for example, the establishment of tax benefits, is being considered by FSIN Russia. For example, in 2018, territorial bodies of FSIN Russia were instructed to cooperate with executive bodies of state power of the subjects of the Russian Federation on the following matters: taking additional measures to provide assistance to the employment of persons sentenced to punishments and other criminal law measures not related to isolation from society; providing tax-related and other benefits to organizations and enterprises engaged in the employment of persons sentenced to correctional labor. This activity of PIs is outlined as a priority in the draft document on the planning of the further development of the penal system – the concept for development of the penal system for the period until 2030.

We share the opinion of R.F. Gallieva that it is long overdue to legislate job quotas for those sentenced to correctional labor, to provide a system of benefits in order to ensure the interest of employers in hiring this category of convicts [2, p. 22], and the results of our study prove this, as well.

Thus, in Zabaikalsky Krai, a 4% reduction in corporate profit tax is provided for organizations designated by local governments as places of serving correctional labor, in order to encourage employers to create jobs for those convicted to correctional labor, to ensure social and labor adaptation of convicts and to repay the damage they inflicted on the state and on injured citizens. The amount of the reduction in corporate profit tax for organizations that have employed persons sentenced to serving correctional labor for the reporting period should not exceed 100% of the salary accrued to persons serving correctional labor [4].

As for reducing the rate of tax on profit for organizations providing jobs to those sentenced to correctional labor, then in accordance with Article 284 of the Tax Code of the Russian Federation, tax rate on the amount of corporate profit tax to be included in the budgets of the constituent entities of the Russian Federation, may be reduced for certain categories of taxpayers by the laws of constituent entities of the

Russian Federation, but may not be less than 13.5%.

According to the analysis of practical experience, we see that approximately 20% of those sentenced to correctional labor, due to their lifestyle, experience serious difficulties in providing the necessary documents for concluding an employment contract with an employer, often they do not have identity documents. When applying to the structural divisions of the Ministry of Internal Affairs of Russia on the issue of obtaining a passport, these persons get a refusal, or the period of registration is unreasonably expanded. The reasons for refusal are most often the absence of registration of the convicted person, and the fact that the documents are received not at the place of registration [5, p. 105].

In this connection it is expedient to issue guidelines for employees of PIs and convicted; the guidelines should state that, according to the Order of the Ministry of Internal Affairs of Russia dated November 13, 2017 "On approving administrative regulations of the Ministry of Internal Affairs of the Russian Federation on the provision of state services for issuing and replacement of passports of the citizen of the Russian Federation confirming the identity of the citizen of the Russian Federation on the territory of the Russian Federation" [13], there is an exhaustive list of grounds for refusal to issue a passport, namely: the person does not have the citizenship of the Russian Federation; the information specified in the application for the issuance of a passport in the prescribed form is false; there is no information about the payment of the state fee. If all required documents are available, then the passport is issued within ten days from the date on which the divisions received all the necessary documents in case of registration of the passport at the place of residence, and in connection with the loss of the passport in case the lost passport was previously issued by the same division; the passport is issued within thirty days from the date on which the divisions received all necessary documents in case of registration of the passport not at the place of residence or in connection with the loss of the passport, if the lost passport was previously issued by another division. We should emphasize that if necessary, for example, in the case of employment of a person sentenced to correctional labor, a temporary identity card of a citizen of the Russian Federation can be issued within the time limits established by law at the request of the

applicant for the period of passport registration. In the same recommendations, it is necessary to explain to convicts and employees of PIs the consequences of the employer's refusal to employ a convicted person sentenced to correctional labor if they lack registration at the place of residence. Thus, Article 3 of the Labor Code of the Russian Federation establishes that everyone has equal opportunities to exercise their labor rights. No one may be restricted in their labor rights and freedoms or receive any benefits, regardless of their place of residence or other circumstances that are not related to the employee's work-related qualities. In addition, according to Article 64 of the RF Labor Code, "any direct or indirect restriction of rights or the establishment of direct or indirect advantages in the employment contract depending on the place of residence (including the presence or absence of registration at the place of residence or staying), as well as other circumstances not related to the qualifications of employees are not allowed". Therefore, if a person believes that they have been discriminated against in the field of work by the employer, they have the right to apply to the court for the restoration of violated rights, compensation for material damage and compensation for moral damage. Employees of the inspectorate, in turn, can send such information to the prosecutor's office for taking measures of the prosecutor's response. Thus, the PI will be able to solve the issue of employment of the convicted person and involve them in serving correctional labor, protect the rights and legitimate interests of the convict and also make an effective educational and preventive impact on the convict. Otherwise, the convicted person will continue to lead a parasitic lifestyle, they will not have an official and permanent source of income, which is quite likely to push them to reoffend after being registered with the PI.

Practice shows that it is often difficult to engage a convict who does not have documents required for employment to the serving of the sentence in the form of correctional labor within 30 days since the sentence was imposed (Part 2 of Article 39 of the RF Penal Enforcement Code) However, PIs are not entitled to take measures against those convicted to correctional labor who have not taken action on the receipt or recovery of the relevant documents, since in accordance with the law the lack of documentation is not a valid reason for non-execution of correctional labor. We find one of the possible solutions to this problem in introducing amend-

ments to Paragraph 2 of Article 39 of the RF Penal Enforcement Code and presenting it as follows: "Probation inspectorates bring those sentenced to correctional labor to the execution of the sentence no later than within 30 days from the date on which the probation inspectorate received the relevant order of the court with a copy of the sentence (ruling, resolution). If the convicted person does not have the necessary documents for employment, then the PI takes measures to facilitate their receiving and sends the convicted person to serve the sentence no later than 50 days from the date on which the probation inspectorate received the relevant court order with a copy of the sentence (ruling, resolution)".

Another option for concluding an employment contract between an employer and a convicted person, if the latter does not have the necessary documents, is to engage the convict in correctional labor only on the basis of a court sentence that has entered into legal force, and registration of the convict with the PI (this possibility was supported by 10% of respondents).

Speaking about the problems of employment of convicts in connection to execution of the punishment under consideration, we cannot but look into the content of Part 4 of Article 40 of the RF Penal Enforcement Code, which states that the convicted person has no right to refuse the job offered to them. At the same time, Part 1 of Article 46 of the RF Penal Enforcement Code does not provide for legal regulation of liability for refusing a job offer, as well as obtaining a PI order for the purpose of employment [17, p. 65].

To eliminate this legal inconsistency, we propose that Part 3 of Article 46 of the RF Penal Enforcement Code should be worded as follows: "The following individuals are considered maliciously evading serving the punishment in the form of correctional labor: the convicted person who has refused the work offered to them, who has committed a repeated violation of the order and conditions of serving the sentence after a written warning has been issued to them for any of the violations specified in part one of this article, as well as the convicted person who has disappeared from his place of residence, whose whereabouts are unknown.»

Under this approach, in case a convict refuses to take the proposed job, they will be found maliciously evading serving the punishment in the form of correctional labor, and the probation inspectorate will send to the court a recommendation to replace correctional work with another form of punishment in accordance with

Part 4 of Article 50 of the RF Criminal Code.

According to the resolution of the Plenum of the Supreme Court of the Russian Federation no. 58 of December 22, 2015 "On the practice of imposing criminal penalties by the courts of the Russian Federation", when deciding whether evasion from serving the sentence in the form of correctional labor is malicious, the courts need to check whether the warnings specified in Part 2 of Article 46 of the RF Penal Enforcement Code and applied to the convict were valid, to investigate the cause of repeated violation of the order and conditions of serving the sentence after the warning was announced to the convict in written form, as well as other circumstances that prove the convict's unwillingness to work (showing up to work in an intoxicated state, absenteeism, dismissal from work, evasion of the obligation to report the change in the place of employment and the place of residence, etc.) [10].

The question concerning the convict's material interest is no less acute. Thus, Federal Law 229-FZ of October 2, 2007 "On enforcement proceedings" [12] provides for the possibility of withholding no more than fifty percent of wages and other income from a debtor citizen. At the same time, the restriction on the amount of deduction from the salary, as well as other income of the debtor citizen, which is established by Part 2 of Article 99 of Federal Law 229-FZ, may not be applied in the recovery of alimony for minor children, compensation for damage caused to health, compensation for damage in connection with the death of the breadwinner and compensation for damage inflicted by a crime. In the cases we listed, the amount of deduction from wages and other income of a debtor citizen can reach 70%, thus the debtor loses all interest in earning money and working. Statistics show that a large number of persons are sentenced to correctional labor under Articles 157, 158 and 161 of the RF Criminal Code [15]. This conviction most often entails the need to pay alimony arrears or compensate for the damage inflicted. Within the framework of the current mechanism for sending convicts to serve punishment in the form of correctional labor, the proposed places for serving sentences are usually low-paid, and therefore not every convict serves correctional labor in full.

The imposition of correctional labor on the convict involves their duty to work at the main place of work or at the places designated by local authorities in coordination with probation inspectorates, but in the area of residence of the

convicted person (Part 1 of Article 50 of the RF Criminal Code).

Consequently, the absence of enterprises, institutions and organizations in some and mostly remote localities makes a court decision practically unenforceable in the case of assigning correctional labor to a convicted person living there and does not allow the convict to exercise their right to work due to the lack of a legal regulation concerning the possibility to find a job on their own in another municipality.

We cannot but agree with M.V. Arzamastsev that the presence of a permanent job significantly affects the rehabilitation of a person who has committed a crime [1, p. 6]. They will be able to provide a decent standard of living for oneself and one's family members and to fulfill the duties assigned by the court related to financial payments if they have a job and develop labor skills. It also leads to the prevention of recidivism.

In our opinion, due to the limited possibility of exercising the right to work in the area of residence by persons sentenced to correctional labor who do not have their main place of work, it is advisable to allow them, in agreement with the supervising inspections, to find a job on their own, outside the area of their residence. It is therefore necessary to amend Part 1 of Article 50 of the RF Criminal Code as follows: "Correctional work may be imposed on the convict who has a primary place of work, and on the convict who has no primary place of work. A convicted person who has a primary place of work serves the sentence in the form of correctional labor at the primary place of work. The convict who has no primary place of work serves the sentence in the form of correctional labor in the places designated by local authorities in coordination with probation inspectorates, but in the area of residence of the convicted person or in places outside the area of residence of the convicted person, in the case of finding employment on their own after the sentence was imposed, but in coordination with the probation inspectorate".

Another important issue that needs to be addressed is the provision of vacations. According to Part 6 of Article 40 of the RF Penal Enforcement Code, during the period of serving correctional labor, an annual paid leave of 18 working days is provided by the administration of the organization in which the convicted person works, in agreement with the PI. The other types of vacation provided for by Russian labor legislation are granted on a general basis. Current regulatory legal acts contain no rules regulating the procedure for accounting for the time

of vacation, except for annual paid leave, in the term of serving a sentence and the procedure for making deductions during this period.

*On the issue of bringing certain categories of convicts to serve their sentences in the form of correctional labor*

The results of our research show that the problem of bringing convicts with disabilities to correctional labor remains very acute from the point of view of organizational and legal support for the activities of PIs. Seventy-five percent of respondents believe that the heads of enterprises and organizations do not comply with the requirements of the legislation, in particular with Federal Law 181-FZ of November 24, 1995 "On social protection of disabled people in the Russian Federation" [11], which obliges them to create or allocate jobs for the employment of disabled people, including those sentenced to correctional labor, in accordance with the quota for hiring this category of persons.

According to the law, federal state authorities and state authorities of the constituent entities of the Russian Federation provide employment guarantees to persons with disabilities by carrying out the following special measures to increase their competitiveness in the labor market:

- establishing a guaranteed number of available jobs for the employment of persons with disabilities in organizations, regardless of the form of ownership;
- stimulating the creation of additional jobs (including special ones) for the employment of persons with disabilities;
- providing job quotas for professions that are most suitable for the employment of disabled people;
- development of rehabilitation programs for the disabled and establishment of working conditions in accordance with them;
- development of entrepreneurial activity of disabled people;
- organization of education, training and advanced training of disabled people in new and in-demand professions.

In accordance with the established quota for the employment of persons with disabilities, employers are obliged to:

- provide jobs for the employment of persons with disabilities;
- create appropriate working conditions in accordance with the individual rehabilitation program of the disabled person.

At the same time, every third expert believes that PI administration does not show initiative in

implementing the requirements of this legislative act; 55% of surveyed staff consider that the factor impeding the timely employment of disabled persons sentenced to correctional labor is the negligence of PI staff in the part concerning the clarification of the list of places where these convicts can serve their punishment in the form of correctional labor, provided that there are appropriate vacancies at enterprises and organizations. Almost every second respondent is sure that when organizing the execution of correctional labor by this category of convicts, the administration of territorial bodies of FSIN Russia does not show sufficient professional perseverance.

State authorities of constituent entities of the Russian Federation in accordance with the legislation have the right to promote the employment of persons with disabilities, among other things by encouraging the creation of specialized jobs for their employment, but the study showed that in half of the cases this issue is not addressed at the regional level.

Despite the decrease in the imposition of sentences in the form of correctional labor by the courts to minors [20 p. 4; 7, p. 120], the problem of serving this sentence by minors remains very acute. In particular, employment causes difficulties, since, as a rule, minors do not have a work specialty. Additionally, labor legislation contains a provision (Article 63 of the RF Labor Code), according to which the employment contract is concluded with the consent of one of the parents and the custody and guardianship agency. In this regard, it is necessary to introduce amendments to Article 50 of the RF Criminal Code so that it would contain conditions for engaging minor convicts in correctional labor.

### *Findings*

Summarizing the above, we can distinguish the following main reasons why those sentenced to correctional labor are insufficiently engaged in it:

- lack of effective preliminary work that would help to create favorable conditions for the organization of convicts' work, both on the part of probation inspectorates and territorial bodies of FSIN Russia;
- low level of interaction of probation inspectorates with municipal authorities of various levels and regional state bodies;
- lack of an organizational and legal mechanism to encourage employers in the field of employment of convicts;
- lack of elaboration at the level of state authorities of RF constituent entities of questions

about the need to amend regional legislation to reduce the profit tax of enterprises and organizations that provide jobs to those sentenced to correctional labor;

- lack of initiative on the part of probation inspectorate staff in working out the issues related to guaranteed quotas of jobs in institutions where convicts work;

- lack of sufficient personnel and modern technological means at probation inspectorate to implement educational and preventive activities aimed at identifying and preventing offenses committed by convicts;

- non-involvement of administrations of organizations, which employ convicts sentenced to correctional labor, from the performance of the statutory duty to assist the probation inspectorate in conducting educational work with convicts (Article 43 of the RF Penal Enforcement Code);

- high work load of PI staff, lack of personnel to address these issues effectively;

- insufficient comprehensive study of the personality of a convicted person who is prone to committing crimes and other offenses. It should be noted many monographic studies proposed to introduce the practice of a pre-trial report, which would give a comprehensive description of the person who committed a crime, and determine the possibility of applying punishment or other criminal law measures not related to isolation from society and the possible methods of influence during the serving of the sentence.

### *Conclusions*

In the science of criminal and penal enforcement law, there is a long-standing discussion about the essence of punishment in the form of correctional labor, primarily about the ratio of labor and punishment in it: some authors see the manifestation of the latter in the mandatory participation of convicts in labor, labor and property restrictions, labor education, the combination of punishment and education, etc. We agree with the researchers who claim that the essence of punishment in the form of correctional labor consists in a combination of punitive and educational elements, which is reflected in the norms of criminal and penal enforcement legislation.

The results of our research indicate that the time is ripe to introduce amendments to the legislative acts concerning the execution of sentences in the form of correctional labor so as to improve the effectiveness of the relevant activities of probation inspectorates.

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#### INFORMATION ABOUT THE AUTHOR

**LEONID N. TARABUEV** – Candidate of Sciences (Law), senior lecturer at the Department of Combat and Tactical-Special Training of the Faculty of Engineering and Economics, Vologda Institute of Law and Economics of FSIN Russia, Vologda, Russian Federation. ORCID: <https://orcid.org/0000-0003-3372-9810>, e-mail: tarabuev@list.ru

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