

Subjective Rights, Freedoms and Legitimate Interests of Convicted Persons to Imprisonment

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ABSTRACT

The article deals with the theoretical and law enforcement aspects of the subjective rights, freedoms and legitimate interests of convicts serving sentences in prison. The problem of the rights, freedoms and legitimate interests of convicts serving deprivation of liberty remains relevant and needs serious consideration, as it is an integral part of the problem of protection of human rights and freedoms of the individual and the citizen as a whole. Protection of the rights, freedoms and legitimate interests of convicts is an important area of work of lawyers in the conditions of the rule of law.

Keywords: subjective law, rule of criminal Executive law, deprivation of liberty, convicts, restrictions of rights, legal duty.

The legal status of convicts usually means a combination of subjective rights and legal duties being the elements of their legal status structure. However, there are positions according to which the structure of the legal status of convicts includes legitimate interests, legal restrictions, legal relations, legal identity, and legal liability. We share the traditional two-element composition of the structure of the legal status of convicts including subjective rights and legal obligations.

In our opinion, legitimate interest is a variety of the rights of a convicted person and it can hardly be considered to be an independent element of legal status. A legitimate interest, being a benefit provided for by law, or a variant of behaviour, the implementation of which depends on the prisoner's behaviour, on the one hand, and on the assessment of such behaviour, on the other hand. The legitimate interest is based on the prisoner's desire to obtain the social benefit of a material and non-material nature stipulated by law or to implement a certain variant of behaviour. The legitimate interest of a prisoner can be implemented following the positive assessment of his/her personality.

As for such elements as legal relations, legal identity, legal restrictions and legal liability, they are not the elements of the structure of the legal status of convicted persons. Legal restrictions act as the main sign of the legal status of convicts.

Criminal penalty application results in the change of the citizen's legal status. Even in the case of the most severe punishment, such as imprisonment, a prisoner always has the opportunity to exercise rights, freedoms and legitimate interests that make the scope of his/her permitted behaviour.

Pursuant to the Constitution of the Russian Federation, the rights and freedoms of a citizen can be restricted only by federal laws and only to the extent necessary to protect the fundamental principles of the constitutional system, morality, health, the rights and legitimate interests of other people, to ensure defence of the country and security of the State (part 3 of article 55). Signs of legal restrictions include the occurrence of adverse conditions for the implementation of the subject's own interests, narrowing of opportunities and freedoms.¹ The restriction of rights and freedoms due to the imprisonment is of a forced nature, since it is impossible to apply the means of corrective influence and the penalty itself without it.²

The greatest degree of restriction of human rights and freedoms is allowed in relation to convicts sentenced to deprivation of liberty [1, p. 68].³ Convicted to imprisonment as a special category of citi-

¹ Malko A. V. Incentives and restrictions in law [Stimuly i ogranicheniya v prave] // General Theory of State and Law. Academic course. Vol. 2. Theory of Law [Obshchaya teoriya gosudarstva i prava. Akademicheskii kurs. T. 2. Teoriya prava]. M.: Zertsalo Publ., 1998. P. 496. (In rus)

² Vitruk N. The Rights of Convicts: Prospects for Development [Prava osuzhdennykh: Perspektivy razvitiya] // Crime and Punishment. [Prestuplenie i nakazanie]. 1993. No. 4–5. P. 21. (In rus)

³ Brilliantov A. V. The legal status of the convicted person and the direction of reforms in the system of execution of criminal punishment [Pravovoi status osuzhdennogo i napravlenie reform v sisteme ispolneniya ugolovnogo nakazaniya] // Improving the legislation and practice of institutions that execute punishment, on the basis of the Constitution of the Russian Federation. Abstracts of reports and communications that execute punishment, on the basis of the Constitution of the Russian Federation. Abstracts of reports and communications (June 1994) [Sovershenstvovanie zakonodatel'stva i praktiki uchrezhdenii, ispolnyayushchikh nakazaniya, na osnove Konstitutsii Rossiiskoi Federatsii. Tezisy dokladov i soobshchenii (iyun' 1994 g.)]. M., 1995. P. 68 (In rus)

zens have a special legal status of a convict, which is differentiated depending on the type of correctional facility.

The legal foundation for the status of convicts is the general civil legal status established by the Constitution of the Russian Federation and universally recognized international rules. Criminal penalty only limits the part of the general legal status of convicts. The greatest restrictions of the legal status of convicts are those of the prisoners.

The legal status of persons sentenced to deprivation of liberty reflects the particularities of development and the situation in the state and of society. Since deprivation of liberty is a form of imprisonment, those sentenced to deprivation of liberty constitute a category of prisoners. We will further define those sentenced to imprisonment as “convicted prisoners”.

Criminal punishment in the form of deprivation of freedom means the creation of the most significant legal restrictions for a person and is applied to restore social justice, reclaim convicts and prevent the commission of new crimes, both by them and other persons. This demonstrates the punitive nature of imprisonment.

The legal status of convicted prisoners is not common for all categories; it differs depending on various criteria and the grounds for classifying convicts and differentiating the penal and correctional process. The classification of the legal status of convicted prisoners consists in distinguishing various groups or categories according to socio-demographic, criminal law, penitentiary, pedagogical, and other criteria.

Depending on the social and demographic criterion, the legal statuses of convicted men and women, adults and minors, foreigners, stateless persons, and former employees of the internal affairs bodies should be distinguished.

In accordance with the criminal law criterion, it is necessary to distinguish legal statuses of those sentenced for crimes of varying severity:

- convicted prisoners for negligent and intentional crimes;
- convicted prisoners in case of various forms of crime repetition;
- convicted prisoners sentenced to life imprisonment.

It is appropriate to single out the main categories of convicted prisoners held in correction facilities of various kinds. Juvenile convicted prisoners are held in juvenile correctional facilities. Adult convicted female prisoners are held in penal colony settlements and general penal colonies. Adult prisoners sentenced for negligent crimes and intentional crimes of low-to-medium severity, if they had not previously been imprisoned, are held in penal colonies. Adult male prisoners sentenced for serious crimes are serving sentences in general penal colonies, provided that they have not been previously imprisoned. Adult convicted male prisoners sentence for dangerous recidivism and for especially serious crimes are held in high-security prisons. Adult male prisoners convicted of crimes of especially dangerous recidivism, convicts, for whom the death penalty is replaced by imprisonment or life imprisonment, as well as those sentenced to life imprisonment, are held in correctional colonies of special regime. Separate categories of male prisoners convicted for especially serious crimes are held in prisons.

Depending on the observance of the imprisonment regime, convicted prisoners are divided into those who mend their ways, those who strongly mend their ways, and those who did not mend their ways. A convicted prisoner belonging to one or another group or individual status determines its content and can serve as a basis for changing the conditions of detention within a correctional facility or changing its type.

The subjective rights of convicted prisoners are the possibilities for the prisoner to exercise certain behavior and use social benefits provided by law and guaranteed by the state.

The peculiarity of the exercise of the rights of convicted prisoners lies in the fact that they are granted by the officials of the penal bodies based on their legal duties. For instance, the right to personal security of convicted prisoners is associated with the obligation of the management of penitentiary facilities to ensure the safety of the convicted prisoner in the event of a threat to his/her life or health. The subjective rights of convicted prisoners presuppose legal opportunities to use certain social benefits, to demand appropriate behaviour from others, and to behave properly.

Thus, the subjective rights of convicted prisoners correspond to the legal obligations of the correction facility management.

In correctional law, the rights of convicted prisoners are expressed in the form of duplication and concretization. Duplication of the rights of convicted prisoners concerns reproduction of certain human rights rules, reflected in the Constitution and other laws, in the correctional code.

Absolute rights are the right to life, dignity, inviolability, protection of one's honour and reputation, freedom of conscience and freedom of religion. The priority of absolute rights excludes any restrictions thereof during the period of imprisonment.

Article 12 of the Correctional Code of the Russian Federation stipulates the basic rights of convicts, including:

- the right to receive information on their rights and obligations;
- the right to courteous treatment by the staff of the facility;
- the right to make statements and complaints; the right to apply in the state language;
- the right to health protection;
- the right to psychological assistance;
- the right to social security;
- the right to legal assistance;
- the right to personal security;
- the right to freedom of conscience and freedom of religion.

The right to freedom of speech is a fundamental natural human right. Convicted prisoners, like other Russian citizens and stateless persons, in accordance with the Constitution of the Russian Federation, have the right to freely express their thoughts, opinions and beliefs on various problems and issues, with the exception of agitation and propaganda inciting racial, national or religious intolerance, hatred and aggression, as well as propaganda of racial, social, national, religious or linguistic superiority.

The Federal Law dated September 26, 1997 "On Freedom of Conscience and Religious Associations" grants prisoners the right to perform religious rites and ceremonies in prisons. Article 14 of the Correctional Code of the Russian Federation provides for the right of prisoners to communicate with the priest at request of the prisoners themselves. Thus, convicted prisoners are currently guaranteed freedom of conscience and freedom of religion.

Convicted prisoners are entitled to pension support in old age, in case of disability, loss of breadwinner, and in other cases stipulated by law. The payment of funds (pensions) is ensured by the social security bodies at the location of the detention facilities. The funds are transferred to the prisoner's personal account.

A variety of the rights of convicted prisoners are legitimate interests, as the possibility of obtaining benefits in case of their good behaviour, provided for by law. The legitimate interests of convicted prisoners include the rewards provided for in the law, as well as other benefits that are not formally rewards.

Convicted prisoners are primarily limited in freedom of movement and disposition of themselves, in freedom of communication, freedom of action, in the right to rest, as well as political and personal freedoms. The essence of the legal duties of convicted prisoners is expressed in the commission of certain actions, or refraining from the actions established by law. Convicted prisoners must fulfill the obligations established by law and comply with the established standards of behaviour.

One of the problems of ensuring the safety of convicted prisoners is accommodation and living conditions. In penal colonies, convicted prisoners are housed in dormitories of 150 people each, so there is a need for them to stay in separate rooms for the night. The European Prison Rules (EPR) recommend that convicted prisoners be placed in separate cells overnight, unless it is better to accommodate them together with other prisoners (14.5 EPR). In our opinion, it is necessary for convicted prisoners to be accommodated by two in the rooms, taking into account their psychological compatibility and further switch to sole accommodation for the night.

Convicted prisoners' freedom of movement is directly restricted. They must constantly stay in a correctional facility.

Convicted prisoners who do not have a profession (specialty), knowledge and skills that they can put into practice performing certain work in a correctional facility are required to receive primary vocational education or be trained in their specialty.

Convicted prisoners are deprived of the political right to participate in elections to government bodies. We consider such a situation to be unfair and think that it should not be included in the penalty in the form of deprivation of freedom. More than 600 thousand prisoners are in detention facilities, and it will be fair and useful if they take part in the elections of state authorities.

Improving the institution of the legal status of convicted prisoners is important for political and humanitarian reasons, as it is an indicator of democracy and respected human rights. In modern conditions, the extension of the rights of convicted prisoners is relevant. Restrictions on the rights of convicted prisoners should be involuntary, therefore, punishment should be minimized.

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