

The Mechanism of Restricting the Legal Status of Individuals Convicted of Multiple Offences

Natalya N. Korotkikh

Far Eastern Federal University, Vladivostok, RUSSIA.

ABSTRACT

The subject of the article is the legal status of individuals serving custodial sentences. Special emphasis is laid on the legal status of individuals serving sentences for multiple offences. The soviet state directed substantial public resources to maintenance of basic human conditions in prisons. Now the Russian Federation, which embarked on a course of reform, has carried out reform of state government and begun the modification of the penal system. Many generally accepted norms and principles of international law in the field of human rights were taken into account and implemented in the national legislation regulating the execution of punishment. The implementation of the rights and freedoms of convicts with regard to the provisions of the Penal Code of the Russian Federation remains problematic. During the serving of a sentence the legal status of convicts may change either for better or for worse, depending on their attitude to imprisonment. The sanctions imposed on individuals who committed multiple offences also restrict their legal status. Such additional limitation of rights must be reflected in the active legislation. The author considers specific restrictions imposed on individuals during the serving of a sentence and reveals the deficiencies of their legal coverage.

KEYWORDS

Rights and freedoms of convicts, imprisonment, restrictions of rights and freedoms, convicted of multiple offences

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Introduction

At the basis of the penal policies of the Russian Federation are the constitutional norms of the rights and freedoms of a human being and citizen. These norms are based on such international legal acts as the Universal Declaration of Human Rights of 1948, the Convention for the Protection of Human Rights and Fundamental Freedoms of 1950, the International Covenant on Civil and Political Rights of 1966, the Declaration on the Protection of All Persons from Being Subjected to Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1975, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment of 1984 [6], the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment

CORRESPONDENCE Natalya N. Korotkikh ✉ natkorot@mail.ru

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or Punishment of 1987, as well as on international legal standards regulating the execution of punishment. With regard to imprisonment such are the Standard Minimum Rules for the Treatment of Prisoners of 1955[9], the European Prison Rules of 1987, the Basic Principles for the Treatment of Prisoners of 1990 and some others (Universal Declaration of Human Rights).

However, the problem is far from being solved. For several centuries Russia was divided between the adaptive and humanist functions of the law and legal culture. In view of this, many provisions of the Penal Code of the Russian Federation (1997) that regulate imprisonments are not in full compliance with international requirements and standards for treatment of prisoners.

The problem consists in the fact that additional restriction of rights applied in reality is not always reflected in the Penal Code. Moreover, some rights granted in theory cannot be exercised in practice. **Literature review**

Punishment is a measure of state coercion prescribed by the court for individuals guilty of an offence (Perera & Lam, 2013). It is common knowledge that punishment is the deprivation or restriction of specific rights and freedoms experienced by an individual (Antonian & Eminov, 2010). Individual rights can be restricted temporarily (for the period of serving the sentence), while others are forfeited indefinitely, for instance in the administration of such punishment as deprivation of a special military title, class rank or state awards. As far as convicts are concerned, depending on the kind of punishment many rights are seized, such as the right to the freedom of movement, the right to vote at elections and be elected, the right to exercise one's ability to work, the right to choose the place of residence etc.

Individuals in prisons suffer the most restrictions. Directly restricted are the rights to personal security, to inviolability of personal life, to security of personal and family secrets, to inviolability of written and telephone communications, to privacy, and to security of the home (Mikheeva, 2001). These restrictions are stipulated not only by the criminal and penal legislation but other normative acts as well. The latter include the Constitution of the Russian Federation, citizenship laws and laws as regards military duty and military service, laws on education and others. At the same time, the norms of international law forbid the imposition of such measures that have discriminatory character and restrict convicts' rights and legal interests without a reasonable basis.

The situation of an individual in social life is revealed in terms of the 'legal status' of an individual. 'Status' is derived from the Latin 'statuer' which means "to fix, to install", 'statuum' meaning "fixed rules of conduct". An authoritative dictionary of the Russian language defines 'status' as a 'legal position', as well as any position or a state of being (Ozhegov, 1978).

Depending on which field of relations this or that part of human activity belongs to, there are different types of legal status. A human being always has several statuses; some of them are acquired at birth, others during one's life (Lola et al., 2016). Also distinguished are general, special and individual legal statuses. Depending on the classification of punishments, special importance is acquired by the mechanism of restricting the basic rights and freedoms of convicts.

The mechanism of restricting the legal status of an individual manifests itself on different levels: international legal, federal and local. Depending on the method, manner and means of legal restriction, we can speak of mechanisms of direct restriction (directly restricting the rights and freedoms of an individual) and mechanisms of indirect restriction (indirectly restricting the legal status of an individual) (Mikheeva, 2001).

Once they become prisoners, certain rights and duties of individuals are seized, restricted, specified or amended in comparison with their general legal

status. The legal state of convicts is a variant of the specific legal status of a person, including the individual legal status of the convict in question.

The purpose of legal incapacitation is defined by universal international legal acts. The Universal Declaration of Human Rights makes it clear that human rights can be restricted in recognition of and respect for the rights and freedoms of others, in compliance with justified moral principles, law and order and public welfare in democratic society. According to the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, restriction of human rights is aimed at maintaining state and public security and economic welfare of a country, prevention of unrest or crime, protection of health or morals of the population, protection of territorial integrity, protection of reputation of other persons, prevention of disclosure of confidential information, maintenance of the authority and impartiality of courts (The European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1987).

Thus, the provisions international law lay down the basis for the mechanism of restricting a convict's rights.

The next element in the mechanism of rights restriction is restrictions imposed by the Constitution and other laws of the Russian Federation. They are closely connected with the mechanism of restrictions on the international level being based on international agreements ratified by the Russian Federation. For instance, in accordance with the Constitution (The Constitution of the Russian Federation, 1993), convicts do not have the right to security of person (Article 22), the right to freedom of movement, the right to exit the Russian Federation (Article 27), the right to vote and the right to be elected (Article 32) and others. These restrictions can be broken down into direct and indirect ones. Direct restrictions are such that are directly set forth in the law (the Constitution, the Criminal and the Penal Codes of the Russian Federation, and others). For example, an individual sentenced to correctional work is deprived of the right to leave his/her work without the permission of the probation department (Part 3 of Article 40 of the Penal Code of the Russian Federation). Indirect restrictions are such restrictions of the legal status of convicts that are not directly set forth in the law but are derived from the sense and meaning of certain norms. For example, a convict is deprived of the right to choose work, since the law stipulates that he/she is obliged to work in the facilities specified for him/her (Article 26 of the Penal Code).

Thus restrictions of human rights are the limits set by the state within which a human being may exercise his/her rights and freedoms. In accordance with Part 3 of Article 55 of the Constitution of the Russian Federation (The Constitution of the Russian Federation, 1993), only federal laws can be sources of restriction of rights and freedoms. This implies that the restriction of the rights of citizens cannot be established by by-laws or any agency, for instance ministerial, legal acts. The legal status of convicts is defined by provisions of the Criminal Code (The Criminal Code of the Russian Federation, 1996), the Penal Code (The Constitution of the Russian Federation, 1993), and the norms of state, administrative, family and other legislations. In accordance with Part 2 of Article 10 of the Penal Code, in serving his/her sentence, a convict is guaranteed the rights and freedoms enjoyed by citizens of the Russian Federation except for the restrictions stipulated by the criminal, penal and other legislation of the Russian Federation. Thus, a convict cannot be deprived of citizenship but he/she is deprived of the right to surrender citizenship (Article 20 of the Law № 62-ФЗ "On Citizenship of the Russian Federation" of May 31, 2002) (The Penal Code of the Russian Federation, 1997); convicts have to right to vote or to be elected (Part 3 of Article 32 of the Constitution). The right to acquire weapons is not granted to persons who are



imprisoned or have a record of intentional homicide (Article 13 of the Federal Law № 150-ФЗ “On Weapons” of December 13, 1996 (The Federal Law On Weapons, 1996).

The point of the matter is that a convict is not deprived of the rights and duties of a citizen of the Russian Federation but his/her exercise of these rights and duties is restricted for the period of serving the sentence. Restriction of the basic human rights of convicts is aimed at restoring social justice, correction of the convict’s behavior, and prevention of new offences (Part 2 of Article 43 of the Criminal Code) (The Criminal Code of the Russian Federation, 1996). At the same time, the execution of punishment is aimed at correction of the convict’s behavior and prevention of new offences by either convicts or any other persons (Part 1 of Article 1 of the Penal Code) (The Penal Code of the Russian Federation, 1997). In this case, the aims of punishment and execution of punishment predetermine the legal status of a specific convict. The restriction of rights and freedoms due to the execution of punishment is involuntary, since it is impossible to apply means of correction without it.

In general, the mechanism of legal restriction is aimed at, on the one hand, creating incentives for socially useful behavior on part of convicts and, on the other hand, containing their illegal intentions. The restrictions aimed at containing illegal intentions consists in setting up surveillance and control over convicts, the introduction of special regimens in correctional facilities, use of physical force on convicts, as well as of special means and weapons, transference of convicts to higher security facilities and other aspects. Legal restriction is aimed at protecting penal relations from possible violations on part of convicts by way of prevention and prosecution. **Aim of the Study**

The article examines the problems related to the mechanism of restricting the legal status of an individual serving a sentence. **Research questions**

How does the restriction of rights and freedoms influence prisoners?

Method

The methodology is formed by systematic, general scientific and special methods of the research. General scientific methods include observation, comparison and description. Special methods of the research are analysis, synthesis, deduction, induction and comparative legal method.

The theoretical background of the work includes works of scientists in the field of criminal law, philosophy, logic, and theory of state and law.

The normative basis of the study is the Constitution of the Russian Federation, the Criminal Code of the Russian Federation and other federal laws, international treaties, universally recognized principles and norms of international law, subordinate legislation.

The empirical basis of the study consists of data obtained from the examination of 512 people, who have been convicted for cumulative offences, or repeated relapse into crime. Statistical data on the persons who were serving sentences in correctional institutions of the Russian Federation in 2014 was also used.

Data, Analysis and Results

The right to personal security

In accordance with part 1 of Article 13 of the Penal Code (The Penal Code of the Russian Federation, 1997), convicts have a right to personal security while serving a sentence. Most international legal acts as well as the Constitution of the Russian Federation define personal security as an essential necessity of life, and

this is embodied by the concept of human rights, freedoms and legal interests. Security is a multifunctional and multifaceted phenomenon. From the holistic viewpoint, security is not only a state or an activity but also a basic need of a person to preserve his/her life and activity. Some criteria of placing a convict in a specific facility are established with a view to ensuring the personal security of convicts. Their protection from any kind of violence on part of others depends on the maintenance of control and discipline in a correctional facility.

Institutions of confinement of high and maximum security have seen an influx of highly criminalized populations in recent years. This causes a decrease in the personal security of prisoners. The present conditions of imprisonment in correctional colonies are not in keeping with modern-day standards. A substantial number of convicts in high- and maximum-security colonies are unlikely to accept the level of control, have a negative attitude to work and reeducation. Their failure to accept the sentence leads to commitment of violent crimes and organized crime.

In accordance with Article 13 of the Penal Code of the Russian Federation (The Penal Code of the Russian Federation, 1997), one of the main special measures of ensuring personal security is transference of a convict to a safe location carried out after a request from a convict or after a decision of the correctional facility's management. However, the penal legislation of the Russian Federation has no clear-cut guidelines with regard to actions when the personal security of a convict is under threat. No criteria of classifying this or that location within a high- or maximum-security prison as safe exist. In accordance with Clause 212 of the Internal Rules and Regulations of Correctional Institutions (The Internal Rules and Regulations of Correctional Institutions, 2005), punitive isolation wards, cell-type premises, solitary cells and other premises of a correctional facility are safe locations. Although legislation points out that transference to a safer location must not lower the legal status of a convict (Clause 214 of the Internal Rules and Regulations of Correctional Institutions), the equipment and conditions there are such that transference cannot but entail certain additional restrictions. It is necessary to admit that, as a rule, such transference lowers the legal status of convicts; they can be physically restricted in their rights, deprived of the freedom of movement, participation in social functions together with other convicts. That could be the reason why 53 percent of the convicts who participated in our survey preferred to deal with emerging threats on their own, whereas 29 percent turned for help to other convicts. Only 12 percent relied on the interference of staff of a correctional facility.

The transference of convicts to lockable premises, cell-type premises and single-space cell-type facilities leads to major restriction of not only the convicts' right to free movement but to the restriction of the legal status of a convict in general. A procedure for such transference must be formalized on the federal level and not in internal operating documents.

The right to the protection of health

The right to the protection of health of convicts is of major importance. Convicts are considerably limited in their right to proper healthcare in maximum- and high-security colonies as well as prisons. For instance, they are not able to get an examination in the clinic of their choice, choose their doctors or buy specific medications. The lack of proper medications in the medical units of the correctional institutions of Russia is an obstacle to curing many diseases. Frequently individuals suffering from a mild form of tuberculosis or other infectious diseases inhabit the same cells as healthy individuals due to the lack of medical facilities in prisons.

A special problem is caused by public health hazards among convicts. As of the beginning of 2014, Russian prisons contained 54 819 HIV-infected people, 52



626 people with viral hepatitis and 28838 people with tuberculosis. 49 183 and 19 280 people were diagnosed with drug addiction and alcoholism respectively (The state of health of prisoners, 2014).

In a number of cases loss of life was caused by untimely dispatch of the patient to medical correctional facilities or by an incorrect diagnosis, untimely medical assistance or failure to provide such assistance. Such situations may occur when a patient is delivered to a medical facility at an odd hour.

Social-demographic indicators of this category of convicts in the colonies of Primorsk Territory show that infectious diseases occur the most frequently with middle-aged convicts: 18-20 years (4.8 percent), 21-25 years (18.9 percent), 26-30 years (35.9 percent), 31-40 years (31.8 percent), 41-50 years (5.8 percent and over 50 years (1.95 percent). In terms of the length of imprisonment, ill convicts are divided into the following groups: from 3- to 5-year sentences – 26.7 percent, from five to ten-year sentences – 45.3 percent, and from 10- to 15-year sentences – 14.6 percent. As many as 62.9 percent of convicts are repeat offenders. High-security prisons contain the most ill convicts, namely 67.3 percent.

Ill convicts undergo changes of their psychological state. Their memory gets duller, they show a lack of initiative, incapacity to focus on one activity and a lack of desire to battle negative consequences of their disease. The conditions of their imprisonment make them irritable and desperate, especially when their hopes of parole or pardon are not justified. *The right to free movement*

Freedom of movement is especially important for convicts. However, it is not sufficiently defined by penal legislation. The degree of the restriction of movement depends on the kind of punishment. The most restriction is imposed by imprisonment, the least restriction by community work. At the same time, the degree of isolation depends on the security level of a correctional institution. In minimal- and high-security correctional facilities, freedom of movement is limited by the sizes of residential and production facilities and the sizes of isolated areas. In prisons and in maximum-security correctional colonies this freedom is restricted by a convict's cell and the exercise yard. The active penal legislation allows for free movement outside a correctional facility but only in certain cases: 1) if it is necessary for the work being carried out (Article 96 of the Penal Code), 2) in case a convict needs to exit the facility due to exceptional personal circumstances, 3) for the time of vacation, 4) if a woman convict has to take her offspring to a relatives' home or to an orphanage (Article 97 of the Penal Code), 5) during imprisonment in colony-settlements (Article 129 of the Penal Code).

However, with regard to individuals serving sentences for a repeated or grave offence, or in the case of cumulative offences, if at least one offence is especially grave, individuals convicted of deliberate crime are completely denied free movement (Part 2 of Article 96 of the Penal Code). Thus the freedom of movement for this category of convicts is only notional and cannot be implemented in practice (The Penal Code of the Russian Federation, 1997). *The right to work*

The working conditions of convicts must be differentiated. Prisons are subject to general labour laws. According to Article 103 of the Penal Code (The Penal Code of the Russian Federation, 1997) convicts are supposed to work. Many years of activity of penitentiary institutions in the world testify to the usefulness of work, primarily for the convicts' re-socialization. The work of prisoners is not considered forced labour and does not contradict the Convention concerning Forced or Compulsory Labour (No. 29), adopted by the International Labour Organization (1955). In accordance with Article 2 of this Convention, 'forced or compulsory labour' does not include any work or service required of an individual as a result of a court verdict. This is supported by Clause 3 of Article 8 of The International Covenant on Civil and Political Rights, which stipulates that the notion of 'forced

or compulsory labour' does not include work or service by an individual as a result of a court verdict (1966). Article 103 of the Penal Code of the Russian Federation as well as Article 3 of the Law "On Employment of the Population in the Russian Federation" were introduced for the correction of convicts and do not contradict the Constitution of the Russian Federation (2009).

However, the organization of labour by imprisoned persons is faced with substantial difficulties in overcoming the social and moral as well as psychological-educational corruption of grave or repeat offenders. As a rule, the category of individuals serving prison sentences have a low level of general competence or professional qualifications. 43.9 percent of them have little or no experience of purposeful work, whereas 74.1 percent were not employed before they were imprisoned. However, the overriding majority of convicts, namely 94 percent, are able-bodied individuals.

According to the data of the Federal Service for the Execution of Sentences of the Russian Federation, 58.9 percent of prisoners that do not work for various reasons are able-bodied population. Only 30 percent of convicts work permanently and 87.8 percent of convicts do not work, as the organization of collective work in prisons does not agree with the main principle and aims of prison life, i.e. maximal isolation of prisoners. In the correctional facilities of Primorsk Territory, only 3 079 of the total 12 674 convicts, i.e. 24.3 percent involved in permanent work at the end of 2014.

Unemployment in high- and maximum security colonies is high. This problem is not properly formalized in legal terms. Apart from reading allowed books, watching television or listening to the radio, convicts have virtually nothing to do. Lack of work makes it difficult for the management to maintain discipline and order in prisons. Poor organization of leisure encourages gambling, procurement and consumption of drugs and alcohol, which are banned in prisons. This entails violations of security levels.

The lack of work for convicts makes the organization of labour-based education for them especially difficult. Idleness enhances moral decline.

Psychological assistance

Psychological assistance Ensuring the right to psychological assistance for convicts is paramount. It is interesting to note that convicts in prisons turn for psychological assistance much more frequently (61.6 percent) than convicts in colonies of high- and maximum-security (31 percent). This could be explained by insufficient psychological support of convicts in correctional colonies. 8.7 percent of convicts never received psychological assistance because there was no psychologist on the spot.

Minimal standards of the treatment of convicts require that convicts are placed in isolated or collective cells taking into consideration their psychological compatibility and their relations with each other (The Standard Minimum Rules for the Treatment of Prisoners, 1977). From the psychological point of view, the optimal number of convicts in one cell is four to seven individuals (Antonian & Eminov, 2010). However, high- and maximum-security prisons have convicts sharing the same space as detachments of 100 people. Each convict is constantly among a large number of aggressive, embittered and tense people.

Therefore it makes sense to rebuild correctional colonies into cell-type facilities with different living conditions from those that are stipulated in the Penal Code at present. The 4- to 7-person cells will also ensure convicts' safety.

Discussion and Conclusion

In the examination of the notion "mechanism of legal regulation" we proceeded from the common view that it implies a set of legal means which are



used to regulate social relations. The mechanism of legal regulation constitutes a hierarchical system of blocks which are different from each other not only in their content and the volume of influence on reality but also in the scope of their impact. At the top of this system are the mechanisms of legal regulation, followed by the mechanisms of ensuring rights and freedoms, and at the bottom is the mechanism of execution of specific kinds of punishment. Thus the mechanism of restricting the legal status of a convict is only a component of a complex process, an element of this mechanism. Extraction from the circle of basic rights and freedoms can be regarded as infringement on basic rights. In this case, as was subtly observed by B.S. Ebzeyev (1998), “restriction of basic rights is closely associated with their denial which implies denial of the material content of basic rights, of the volume of social, political and other benefits owed to the holder of these rights as well as minimization of basic rights”.

Some experts believe that the problem of restricting the rights of convicts can be solved in a diagonally opposed way, i.e. by the expansion of rights of prisoners. Restrictions should be avoided as much as possible, and legislation should minimize them (Smirnov, 2014). We believe that this observation is fair since the very concept of imprisonment implies restriction of the basic rights and freedoms, including the freedom of movement, the freedom of self-management, the freedom of communication, the choice of labour activity, the freedom of actions, the rights to rest, to education, political rights and freedoms, personal freedom, the freedom of entertainment and others.

In our opinion, individual prohibitions with regard to prisoners are inappropriate. One such restriction of personal freedom, for example, is the prohibition to use crayons. Internal regulations forbid convicts to tattoo their own and others' bodies, use jargon, or give nicknames. Such actions, which are unavoidable in correctional facilities, are identified as violations of security level and can entail punishment.

At the same time our research shows that the legal status of individuals convicted of multiple offences or repeat offenders is not regulated properly in the penal legislation. It must be made more distinct from the legal status of convicts who committed one crime or first-time convicts. Logically, the penal legislation for persons with a high degree of social risk must foresee tighter control of imprisonment than that for other prisoners. Naturally, this must have an effect on the individual legal status of convicts as subjects of correctional relations.

Within the framework of penal relations, the restrictions imposed on prisoners are the same in character but different in size depending on the sentence. However, they can vary depending on the category of prisoners and the type of prison. The legal status of each category of convicts must be modified accordingly.

Moreover, the study shows the imperfection of the definition of the legal status of convicts. Thus Clause 1 of Article 73 of the Penal Code says, “The persons sentenced to imprisonment shall serve their sentences in a correctional facility within the territory of a constituent entity of the Russian Federation in which they lived or were convicted”. It is not entirely clear what exactly this clause stipulates – a right or an obligation of a convict. At the same time, the law foresees cases when an individual can be ordered to serve a sentence not in the region where he/she lived or was convicted. One of the reasons for making such a ruling could be lack of the correctional facility of the type necessary in every individual case. The overriding majority of prisoners (79.3 percent) serve their sentences a long way from their homes. In view of this, the possibility for them to communicate with their relatives or friends is significantly reduced. This fact adds to the problems of re-socialization of this category of convicts. **Implications and Recommendations**

The study shows that the legal status of a convict is formed in several stages. The volume of restricting the rights and freedoms of a convict is defined both by international legal acts and federal laws of Russia.

The penal legislation of the Russian Federation defines the general rights and freedoms for all convicts and specific rights for individuals depending on their sentences. At the same time, some basic rights guaranteed by the state are either not fully regulated by the law or cannot be realized by convicts due to certain reasons.

The need for legislative recognition of the legal status of convicts is based on the provision of the Constitution stating that the rights and freedoms of every human being are the supreme value and their recognition, observance and protection are a duty of the state (Article 2 of the Constitution of the Russian Federation).

The specifics of the status of persons serving sentences for committing multiple crimes are such that they hold a special place in the system of special statuses of an individual. Failing to recognize the specific personality traits of an individual who committed multiple offences will inevitably entail additional restrictions of his/her rights and freedoms and make the execution of punishment a mere formality.

Only if a specific correctional facility allows convicts to exercise their rights to life, protection of health, personal security, psychological support, medical, including disease-prevention, assistance and other rights, will these constitutional rights be upheld. However, infringement on or restriction of these rights is unavoidable in penal institutions. Therefore, the boundaries of such restrictions must be clearly defined by federal laws in contrast to by-laws.

We consider it expedient to distinguish between rights, legal interests and obligations of individuals who serve sentences at the same institution, have the same length of sentence, but who committed multiple offences crimes or are repeat offenders. In our opinion, it is necessary to replace detachment-based work with convicts for working as smaller group. The formation of such groups must be based on the level of marginalization and the gravity of record of each convict, their receptiveness to sensitization and the principles of cooperative learning and vocational training. Cell-type facilities should contain from three to four people.

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Natalya N. Korotkikh PhD, Associate Professor of Department of Far Eastern Federal University, Vladivostok, Russia. **References**

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