Legal Shortcomings of Preventing Infectious Diseases in Russian Convicted Persons

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Abstract. The paper focuses on the shortcomings of the legal regulation of preventing infectious diseases among the convicted people in Russia. The authors consider numerous legal documents. Using theoretical methods of cognition, the authors confirmed the need to improve existing legislation on preventing infectious diseases in convicts by making appropriate amendments to Article 1 of the Criminal Code of the Russian Federation. It is also necessary to amend Articles 18, 25, 39, 47.1, and 85 of the Penal Enforcement Code of the Russian Federation. We proposed consolidating preventive measures at the legislative level when a convict with a severe infectious disease is admitted to a correctional institution. It is also necessary to determine the body executing criminal punishment and establish various measures when such a disease is detected in a convicted person already in a correctional institution. The latter includes, among other things, broadening the grounds for introducing special conditions in the jail by identifying the epidemic among convicts sentenced to imprisonment. We suggested enshrining the possibility of suspending punishments not related to the isolation of convicted persons from society in emergency cases and the actual impossibility of executing sentence in the relevant Articles of the Penal Enforcement Code.

Keywords: Human and health · Sick convicts · Deprivation of liberty · Penalties · Community · Infectious diseases · Improvement of legislation

1. Introduction

As things stand, a total of 5,130 convicted prisoners were held in places of detention, and 472,856 convicted prisoners were kept on the records of criminal enforcement inspectorates. Considering such a number of condemned, the prevention of infectious diseases is one of the topical and priority directions of the Russian penal and correctional system (especially taking into account the epidemic of a new coronavirus infection). Simultaneously, Russian criminally-executive and other legislation do not always contain the necessary norms for the preventive maintenance of infectious diseases among persons convicted to imprisonment or other criminal punishments. The theory of the criminally-executive law and appropriate legal-organizational measures in this sphere are not developed. Thus, the author’s theoretical and applied proposals on the decision of the given problems possess urgency and novelty.

It is possible to allocate some legal problems in this sphere:
The mass spread of infectious diseases (and even an epidemic) among convicted prisoners is not the basis for the introduction of special conditions in correctional institutions, while it is in this legal institution that the exercise of some of their rights preventing the spread of infectious diseases may be suspended;

Following Article 85 of the Penal Enforcement Code of the Russian Federation of January 8, 1997, No. 1-FZ [9], the grounds for the introduction of this regime include a natural disaster, the introduction of a state of emergency or martial law in the area where the correctional institution is located, mass disturbances, and group disobedience by convicts. The mass spread of infectious diseases among the population is the only possible basis for the introduction of a state of emergency, according to Article 3 of the Federal Constitutional Law of the Russian Federation of 30.05.2001 No. 3-FKZ “On a state of emergency” [10];

The Penal Enforcement Code of the Russian Federation contains practically no provisions that directly enshrine measures for preventing infectious diseases among the convicted (except for Articles 18 and 80), thereby limiting the rights of convicted people. Simultaneously, the absence of relevant legislation in the studied area leads to the fact that restrictions on the rights of convicted people in the application of the regime and other preventive measures are placed on a subordinate level.

2. Materials and Methods
Considering the existing organizational and legal problems in preventing the spread of infectious diseases among convicted people deprived of their liberty and those serving sentences not connected with isolation from society, the methodological basis of this paper was provisions of materialistic dialectics, through which the theory, legal regulation, and practice of sentence enforcement in the Russian Federation were analyzed.

We used such research methods as analysis, synthesis, comparative-legal, forecasting, analysis of documents, etc. These methods allowed us to reveal the necessity of improving penal and correctional legislation and preventing infectious diseases in places of imprisonment and among convicts on disciplinary inspection records.

The opinions and conclusions specified in the paper are based on:

- The research of the current legislation of the Russian Federation;
- Statistical data on the activity of establishments and bodies executing criminal punishments, including placed on the official site of the Federal service of execution of sentences;
- The information published in the scientific literature and the periodical press;
- The scientific works and other works of experts studying the activities of establishments and penal enforcement bodies and executing criminal punishments in the Russian Federation.

3. Results
Having studied the legislation of the Russian Federation on the execution of criminal punishments, it is possible to ascertain that the regulation of the necessary preventive measures concerning various infectious diseases (for example, the new coronavirus infection) is referred to a sub-legal level since the current norms of the Penal Enforcement Code of the Russian Federation only indirectly concern these issues without precise regulation. However, this is hardly reasonable because of Article 55 of the Constitution of the Russian Federation, the provisions of which make it possible to restrict human rights at the level of federal law. In general, it seems that the legal position of convicts in applying various restrictive and preventive measures aimed at improving or maintaining their health should be comprehensively regulated at the level of laws [12].

At the same time, the Order of the Ministry of Justice of the Russian Federation “On approval of the internal regulations of correctional institutions” (December 16, No. 295) [7] stipulates that convicts are obliged to undergo medical examinations. The examinations to detect infectious diseases promptly
(paragraph 16) should be taken for the period of carrying out anti-epidemic measures or restrictive measures in correctional institutions in cases provided for in Article 85 of the Penal Enforcement Code of the Russian Federation.

The Order of the Ministry of Justice “On the approval of the procedure for organizing medical assistance to persons remanded in custody or serving a prison sentence” (December 28, 2017 No. 285) [8] contains several provisions in this area. “People brought to the detention facility with a suspicion of an infectious disease that poses an epidemic threat to others are placed in a medical facility after examination by a medical officer and placed in a medical facility designated for that purpose.”

Thus, the legal situation of convicted persons serving custodial sentences is adjusted at the sub legislative level.

Nowadays, the penal and correctional legislation does not adequately regulate the procedure and conditions for the execution of punishments not related to the isolation of convicts from society in the event of relevant extreme situations, including those associated with the spread of serious infectious diseases and resulting in a state of emergency [2, 3].

Thus, Articles 11, 12, and 13 of the Federal Constitutional Law of the Russian Federation “On the state of emergency” provide full or partial suspension of the powers of the executive authorities. This is also true for the local authorities, temporary relocation of residents to safe areas, restrictions on freedom of movement, and quarantine. Undoubtedly, the application of such measures has an overall impact on the enforcement of punishments not related to isolation from society and on the legal status of convicted persons and the staff of institutions and agencies enforcing penalties. However, the Instruction on the organization of the enforcement of sentences and measures of a criminal-legal nature without isolation from society [6] does not contain corresponding norms on the procedure for the enforcement and serving of sentences by convicted persons not deprived of their liberty under such extreme conditions. The standards of the Penal Enforcement Code in the studied area are more focused on penalties related to the isolation of convicted people from society. For example, Article 85 “Special conditions in a correctional institution” applies only to the execution of liberty deprivation sentences. There is no similar Article in the Criminal Enforcement Code of the Russian Federation devoted to punishments not related to isolation from society. The items 25, 39, and 47.1, concerning the procedure of executing a specific type of punishment (compulsory labor, correctional labor, etc.) also do not contain any norms concerning the execution and serving a sentence in case of extreme situations.

4. Discussion

An essential role in preventive work with sick convicts could theoretically be played by members of the public (doctors, psychologists, psychiatrists, and other specialists) who are members of subjects of public control over the observance of the rights of convicts [1] and general influence in their respect [4, 5] (public supervisory commissions, the Public Chamber of Russia, public councils functioning under bodies of the penal enforcement system, etc.).

However, the Federal Constitutional Law of the Russian Federation “On the state of emergency” also has restrictions on the functioning of public organizations, for example, in the form of suspension of their activities (Article 12). The measures applied can entail a change in the rights of organizations and public associations (Article 28). This implies adjusting the organization of the interaction of institutions and bodies that execute punishment with the above-mentioned public organizations in extreme conditions.

While the necessity of public control over the observance of the rights of convicted people is essential, the practice of its implementation is contradictory due to the shortcomings in the legislation. It mainly concerns the definition of the subject of control, rights, and duties of public monitoring commissions, other public control subjects, administration of correctional institutions, etc.

Similar problems occur with the legal regulation and implementation of public influence about convicted persons, which is insufficiently regulated in the Penal Enforcement Code of the Russian
Federation.

These and other problems of public control and social influence of convicted people are complicated in situations that are the basis for introducing special conditions in a correctional facility.

It appears that the activities of any public organization, including those exercising public influence over convicted people and public oversight, may be restricted in a state of emergency. However, this is also not regulated in the Penal Enforcement Code of the Russian Federation.

There is no doubt that the emergence of various emergency conditions, including those related to the spread of serious infectious diseases, generally affects the enforcement organization and the legal status of convicted persons and the staff of institutions and agencies enforcing punishment.

In the context of ensuring human rights, of particular importance is the development of legal norms regarding convicted persons suffering from tuberculosis, HIV, mental disorders, etc., since, in addition to external factors, serving a criminal sentence is burdened by the presence of the disease. Among other things, this is due to difficulties in employing such sick persons, e.g., while performing compulsory or corrective work.

In our opinion, it is necessary to strengthen the possibility of suspension of non-custodial sentences during the state of emergency in addition to the precise regulation of preventive measures for convicted persons to prevent the spread of infections with a high level of infection. Our view is based on the measures that can be taken regarding the imposition of such a regime. For example, when a sentenced person is moved to another safe area, it is unclear how to execute the sentence. The transfer of personal files of convicts from one territory to another to the criminal enforcement inspectorate may lead to a sharp increase in the number of people registered in a small inspectorate branch. Therefore, there is a possibility of a significant increase in the workload of the staff, the lack of careful consideration of the peculiarities of convicts (especially those with diseases), the possibility of employment of all those serving their sentence, the implementation of preventive work in an inadequate amount, etc. When isolation and other preventive measures are introduced after the spread of infectious diseases, self-imposed isolation suspends the execution of the sentence until the restrictions are lifted.

5. Conclusion
There is a need to improve the specific provisions of Russian legislation to prevent the spread of infectious diseases among convicts. It is essential to establish a separate list of preventive measures to:

- prevent the infection and spread of diseases in Article 18 of the Penal Enforcement Code;
- prevent the mass spread of infectious diseases as one of the grounds for the introduction of special conditions in correctional facilities in Article 85 of the Penal Enforcement Code;
- prevent the possibility of suspending the execution of sentences not involving isolation from society in the event of a state of emergency in Article 85 of the Code. 25, 39, and 47.1 of the Penal Enforcement Code of the Russian Federation.

These amendments will make it possible to resolve the discussed problems. We believed that our recommendations could intensify further scientific research in this area.

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