




Peculiarities of the Criminal and Intelligence Nature of Imposing Punishment in the Form of Restriction of Freedom

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Abstract: It would be wrong in denying the unalterable fact of certain correlation between the results of law enforcement intelligence operations and the efficiency and effectiveness of the results of the sentence enforcement. This fully applies to such a relatively new for Russian criminal law type of punishment as restriction of freedom. Speaking about the current edition of the Criminal Code of the Russian Federation, appearance of restriction of freedom as a type of punishment could be attributed to 2009, although initially this type of punishment was present in the system of punishments when the current Criminal Code of the Russian Federation came into force. However, the introduction of restriction of freedom was delayed due to the lack of material and economic conditions for its implementation. At the session of the State Council Presidium that was dedicated to the issues of penal enforcement system functioning (the session took place on February 11, 2009 in Vologda), the President of Russia pointed to the necessity of humanization of criminal punishment system, including through dramatic multi-vector review of norms of Criminal Code of the Russian Federation regarding such punishment measures as restriction of freedom and arrest. One of the main objectives in the execution of the considered punishment is the goal of preventing the convicted person from committing new crimes. In this case, the undeniable benefit is provided by the law enforcement intelligence operations. Through a number of law enforcement intelligence operations, criminal intentions are revealed and offences and crimes are suppressed, which makes the process of execution of punishment more effective and the goals of punishment quite achievable. The aim of the study is to confirm the thesis about the need to review the place, role and special social purpose of punishment in the form of restriction of freedom within the general system of criminal punishment types. The objectives of the study include the determining factors of identification of genesis-functional commonalities of the two branches of legislation – law enforcement intelligence and criminal.


1 INTRODUCTION

In the theory of criminal law, punishment in the form of restriction of freedom occupies a special place, both in terms of theory and in terms of law enforcement practice. Therefore, it has been repeatedly noted that despite the progressiveness of

the current criminal and penal enforcement norms, its specific application is not yet as widespread as required by social practice. Due to this fact, the effectiveness of application and execution of restriction of freedom directly depends not only on the necessary material and economic conditions, but also on providing this process with an ontological

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apparatus, as well as a system of judicial and methodological interpretations.

The introduction of the restriction of freedom as a type of punishment in the current version of the Criminal Code of the Russian Federation dates back to 2009. At the session of the State Council Presidium that was held on February 11, 2009 in Vologda, the President of Russia pointed to the necessity of humanization of criminal punishment system, including through obligatory reconstructing the norms of the Criminal Code regarding such penalties as restriction of freedom and arrest.

In the process of implementing these initiatives, Federal Law No. 377-FZ of December 27, 2009 "On amending certain legislative acts of the Russian Federation related to the enactment of the Criminal Code of the Russian Federation and the Penal Enforcement Code of the Russian Federation on punishment in the form of restriction of freedom" was passed. Since January 2010, restriction of freedom began to be applied as a new type of criminal punishment (although its title remained the same as before).

From this moment, restriction of freedom can be imposed as the main or additional punishment for minor or medium gravity crimes. Its general terms shall be from two months to four years when applied as the main type of punishment, or from six months to two years when applied as a punishment in addition to compulsory works or imprisonment. In case of juveniles convicted for minor or medium gravity crimes, restriction of freedom is imposed only as the main punishment (I.V. Sokolov, 2010) for a period from two months to two years (Part 5, Article 88 of the Criminal Code of the Russian Federation).

2 MATERIALS AND METHODS

Materials used in conducting this study:

- Papers devoted to the analysis of the problems of the execution of punishment in the form of restriction of freedom;
- Modern scientific researches, which are devoted to problems of execution of restriction of freedom;
- Publications devoted to the problem of using methods and means of law enforcement intelligence operations in the execution of punishment in the form of restriction of freedom;
- Scientific studies that analyze the complex of social relations arising during the imposition and serving of punishment in the form of

restriction of freedom, as well as the detection and suppression of offences during its execution;

- Official statistics of the law enforcement and judicial authorities, reflecting the data on the imposition and enforcement of punishment in the form of restriction of freedom;
- Laws and sublegislative acts of the criminal and intelligence nature, which regulate the judicial implementation of the provisions of the institution of restriction of freedom;

Research methods: the methodological basis of the scientific article is a set of methods and techniques of scientific cognition inherent in the science of criminal and intelligence jurisprudence. In particular, the study used dialectical, comparative, logical-legal, complex and logical-juridical methods of cognition.

3 RESULTS AND DISCUSSION

As of 01.04.2021, restriction of freedom is envisaged for more than 120 component elements of a crime as the main type of punishment, and for more than 130 component elements of a crime as an additional type of punishment (T.A. Kosnyreva, 2011). In other words, restriction of freedom as a form of punishment has quite broad prospects for the implementation of the basic provisions of criminal policy.

The main components of the punishment in the form of restriction of freedom are (Article 53 of the Criminal Code):

- Mandatory attendance to the penal enforcement inspectorate once a month or at least once a week (1 - 4 times a month);
- The convicted person is prohibited from changing his place of residence or stay without notification and permission of the penal enforcement inspectorate;
- The convicted to restriction of freedom is prohibited to travel outside the municipality where he/she lives or stays.

The criminal and penal laws also provide for a number of other restrictions. These restrictions are set by a specific court in each case with respect to a particular convicted person (G. Verina, 2010). These restriction measures can be supplemented or canceled by the court based on what will be the behavior of the convicted person while serving his/her sentence. Only a specialized state body executing punishment (penal enforcement inspectorate) carries out this process. In case of willful evasion of a convicted person from serving restriction of freedom (S. S. Oganessian, S. K.

Shamsunov, 2018), when it has been imposed as the main type of punishment, the unserved part of the sentence may be replaced by the court, but again, this is done only on the proposal of the penal enforcement inspectorate. Restriction of freedom is replaced with compulsory works or imprisonment at the rate of one day of compulsory works for two days of restriction of freedom or one day of imprisonment for two days of restriction of freedom. Of course, there is a question of providing factual materials indicating the willful evasion of the convicted to restriction of freedom from serving the sentence. In this sense, the process of execution of punishment is supplemented by functions of control over this process, which may be carried out by means of law enforcement intelligence operations (G.S. Shkabin, 2020).

The main provisions and features of the process for the execution of punishment in the form of restriction of freedom are established by Chapter 8 of the Criminal Executive Code of the Russian Federation and the Instruction on the organization of the execution of punishment in the form of imprisonment (hereinafter referred to as the Instruction).

Decree of the Government of the Russian Federation No. 198 of March 31, 2010 expressly states that monitoring of the behavior of convicted persons to restriction of freedom may also be carried out with the help of special means that are designed to establish the location of those convicted to restriction of freedom. It cannot be excluded that the results of law enforcement intelligence operations regarding the persons serving this type of punishment may also be used in favor of a number of security procedures, for example, information on the specific location of the convicted person.

In 2014, the judicial authorities imposed restriction of freedom to 26,983 convicted persons, and in 2015, the number of such persons amounted to 20,827. In 2016, it was imposed in 25,339 cases, and in 2018, it was imposed on 23,009 persons. In our view, such difference in statistical indicators is associated with insufficient normative regulation of certain issues of execution of punishment in the form of restriction of freedom and, as a consequence, problems arising in the course of its execution.

Data from the Judicial Department of the Supreme Court of the Russian Federation indicates that often restriction of freedom is imposed for assaults in the form of willful infliction of moderate harm to the health of citizens. In 2018, courts imposed restriction of freedom on 4,145 persons for this criminal offence. Currently, there is no downward trend (L.V. Bertovskii, A.V. Kvyk, 2020).

Some of the most common crimes for which courts impose restriction of freedom are:

1. Theft as covert embezzlement of another person's property (Part 1 of Article 158 of the Criminal Code of the Russian Federation).
2. Illegal possession of the vehicle without the purpose of embezzlement (Part 1 of Article 166 of the Criminal Code of the Russian Federation)).
3. Illegal possession or carrying of weapons, ammunition (Article 122 of the Criminal Code of the Russian Federation), etc.

At the same time, despite the recent court practice, as well as taking into account direct instructions from the highest judicial bodies of the Russian Federation that lower judicial bodies do not always correctly impose restriction of freedom (Aleksandra S. Vasilenko, Vladimir M. Filippov, Maria A. Simonova, and Sergey A. Kovalenko. 2020), the considered problem needs a systematic analysis.

Another problem is that there is not quite normal practice when courts use criminal law wording in the sentence, without taking into account that the criminal law provides general provisions, and in a particular sentence, when indicating measures to restrict the right of the convicted person to leave the municipality, the borders of a particular administrative-territorial unit must be indicated. This circumstance sometimes complicates the execution of punishment and reduces its corrective impact.

For instance, when considering the appeal, the Lomonosov District Court of the city of Arkhangelsk found out that during the consideration of the case in the justice court, the judge did not specify the administrative-territorial unit, which is prohibited to M. to travel abroad. M. himself lived in Arkhangelsk so this should have been indicated in the sentence of the justice court.

Cases where restriction of freedom is imposed by the court as an additional type of punishment are also not an exception. There are also inaccuracies in the sentence with respect to the determination of the municipality (A.M. Pleshakov, G.S. Shkabin, 2020).

For example, the verdict of guilty of the district courts in Vologda indicated the obligation of the person convicted to restriction of freedom of "not leaving the borders of the municipality of residence or stay". In our view, this wording is not quite correct and the court had to apply another, more precise wording, such as "not leaving the borders of the municipality, in which the convicted person has a place of residence and will reside during the period of serving the imposed sentence".

In accordance with the penal law, the court must determine a specific number of attendances at the penal enforcement inspectorate per month, as well as oblige the convicted person to get registered there. According to the results of our study, it was revealed that the courts often do not indicate a specific number of attendances in a particular period; they use vague, unspecific wordings when describing the measures to be executed by the convicted person while serving the sentence.

As an illustration, here is an example of a sentence of the Novodvinsk City Court, in which the justice of the peace did not specify the number of attendances at the penal enforcement inspectorate of the convicted person, but used the wording "with the obligation to periodically attend the penal enforcement inspectorate for registration".

In a number of other sentences, judges have used the wording "frequency of attendance of the convicted subject not less than once a month". This wording gives a wide range of interpretations and discretion in the execution of the court sentence. Moreover, it provides opportunities for abuse and exceeding of official powers and corruption of all kinds.

We cannot but agree with the proposals of a number of authors who point to the need to exclude from court sentences wordings such as "at least... once a month" (R.V. Kombarov, A.M. Potapov, 2017).

Another important aspect found during this study is that courts often do not take into account the personal characteristics of the convicted persons when imposing punishment in the form of restriction of freedom.

At the same time, according to Part 3 of Article 60 of the Criminal Code of the Russian Federation, when imposing the punishment, the court must take into account the nature and degree of public danger of the offense, specifics of the individual characteristics of the perpetrators, as well as how the imposed punishment in the form of restriction of freedom will affect the correctional process, and whether there are real conditions for the execution of punishment in the form of restriction of freedom.

As it has already been noted in the legal literature and confirmed by the results of our study, the courts in a number of cases, when imposing criminal punishment in the form of restriction of freedom, are guided by criminal law components and characteristics, and social realities remain outside the scope of judicial consideration in more preventive terms. (Y.A. Golovastova, A.A. Chistyakov, K.A. Chistyakov, 2020).

The noted shortcomings in terms of practical and legal aspect in their analysis and comprehension allow us concluding that a number of provisions of the Criminal Code of the Russian Federation and the Criminal Executive Code of the Russian Federation are ineffective due to deficiencies in the initial aspect (A.M. Pleshakov, G.S. Shkabin, 2020).

These shortcomings of legislation, judicial and criminal-executive practice allow us outlining the following scope of problems:

- 1) Collisional nature of the content of punishment in the form of restriction of freedom with its not quite correct hierarchical meaning and place in the system of punishments;
- 2) Unspecific wording of the nature and scope of restrictions imposed on convicted persons to restriction of freedom, which prevents the efficiency and uniformity of execution of punishment in the form of restriction of freedom;
- 3) Insufficiently clear and precise distinction between punishment in the form of restriction of freedom with probation in terms of its nature and duties imposed on the probationer during the period of probation and the convicted to restriction of freedom with the imposition of judicial duties. (I.V. Sokolov, 2010);
- 4) Comparatively small amount of deprivations and restrictions of rights and freedoms of a convicted person to restriction of freedom in comparison with other criminal punishments;
- 5) Restriction of freedom cannot be applied to persons who do not permanently reside in the territory of the Russian Federation;
- 6) Unspecific nature of the wording of Part 1 of Article 53 of the Criminal Code of the Russian Federation, which in fact develops into a problem of legal regulation of those restrictions that should be imposed on a convicted person to restriction of freedom.

These problems, which arise in the imposition and execution of punishment in the form of restriction of freedom, create certain problems for the courts in the process of its application to perpetrators.

In order to improve the procedure for imposing punishment in the form of restriction of freedom (L.A. Bukalerova, A.V. Ostroushko, N.E. Rustamov, 2016) and to make the process of its imposition more effective, it seems advisable to clarify the order of its imposition by the highest court (A.M. Pleshakov, G.S. Shkabin, 2019). It is thought that this ruling should include the following recommendations to the judiciary:

- 1) Determine the specific restrictions that, in accordance with Part 1 of Article 53 of the Criminal Code of the Russian Federation, must be imposed on each person convicted to restriction of freedom;
- 2) Restrictions and obligations, which are not provided for by Part 1 of Article 53 of the Criminal Code should not appear in the same form in the sentences for specific cases, but only with "regard" to the specific subjects and circumstances of the case;
- 3) With a conditional sentence, if there is a need to impose restriction of freedom as an additional punishment, it should initially indicate the legal restrictions relating to restriction of freedom and to probation, stipulating in the sentence their independent execution;
- 4) Clearly specify the administrative-territorial unit in the sentence where the convicted person resides or will reside during the execution of the sentence;
- 5) Not impose restriction of freedom to persons with a negative characteristic, deviant behavior or persistent criminal tendency;
- 6) Not impose restriction of freedom to persons whose work involves trips outside the boundaries of the administrative-territorial unit;
- 7) Not impose restriction of freedom if it may adversely affect the condition of third persons living together with the convicted person;
- 8) In accordance with Article 53 of the Criminal Code of the Russian Federation, it should clearly prescribe the wordings "restrictions" and "obligations", delimiting them in the sentence.

We believe it is necessary to generalize the existing judicial and penal enforcement practice and provide a detailed explanation of the procedure for imposing and executing restrictions on freedom at the level of a resolution of the Plenum of the Supreme Court of the Russian Federation in order to avoid mistakes and inaccuracies when imposing punishment in the form of restrictions on freedom in the future.

It should be noted that despite all the progressiveness of criminal and penal norms, the use of punishment in the form of restriction of freedom is not as widespread as it was conceived during the implementation of the criminal-legal reform in Russia. The issue of some sort of sluggishness of this process is seen in the lack of awareness of the effectiveness of punishment in the form of restriction

of freedom, outright unwillingness to widely use more humane forms of punishment fearing accusations of connivance and forbearance.

4 CONCLUSIONS

It seems that it is impossible to really consider restriction of freedom as an effective alternative to imprisonment, contrary to the predictions of practitioners and scientists, and this is primarily related to the psychological perception of this type of punishment, as well as specific attitude of convicts to it (*Alexey Yu. Oborsky, Alexey A. Chistyakov, Alexey I. Prokopyev, Stanislav V. Nikolyyukin, Kirill A. Chistyakov, Larisa I. Tararina, 2018*).

These problems and controversial situations arising in practical work (*Bertovskii L.V., Kurbatova S.M., 2020*) should be taken into account in the imposition and execution of restriction of freedom. The following provisions will be quite tangible in the near future for the implementation of criminal policy provisions:

1. Effectiveness of the prohibition on leaving home at certain time of the day. Assuming the implementation of the humanized vector of the system of criminal punishment through the introduction of restriction of freedom as it is now, there is a need for the state to create the widest set of special technical means of monitoring restriction of freedom.
2. Prohibition to visit certain places, as well as entertainment and recreational activities is carried out with direct implementation of a complex of monitoring means for persons who have been imposed restriction of freedom. Nevertheless, the problem is supplemented by not quite clear legislative wordings of this norm.
3. When changing the place of work, permanent residence or temporary stay without the permission of the penal enforcement inspectorate, there are issues that can be solved by a complex of law enforcement operations, but these needs are not considered by the current law enforcement legislation.
4. The obligation of the convicted person to attend the penal enforcement inspectorate for registration at intervals determined by the court. In this case, the problem consists in the absence in the court verdict of the frequency of attendance of such a person to register with the penal enforcement inspectorate in accordance with Article 53 of the Criminal Code of the

Russian Federation. However, it is necessary to carefully consider the issue of fixing the proper wording of this duty, taking into account the provisions of the Resolution of the Plenum of the Supreme Court of the Russian Federation of December 22, 2015, No. 58, in which the number of attendances for the registrations with the penal enforcement inspectorate is determined only by the court that imposed the punishment.

5. Duly defined place of restriction of freedom in the system of punishments. The current practice of restriction of freedom allows asserting unequivocally that the current type of punishment is different from the type of punishment that the authors of the current Criminal Code of the Russian Federation wanted to have initially. We are talking about the volume, complex and nature of restrictions inherent in this type of punishment. From this point of view, the place of restriction of freedom in the system of punishments should be reconsidered. That is, we should not deny that the criminal legislation that was in force earlier provided for stricter measures toward the convicted person.

In our view, restriction of freedom in the system of punishments should be placed before compulsory works, since the latter restrict the constitutional freedoms (the right to free labor), although under a court sentence. That is why, based on the degree of punitive impact, restriction of freedom should be placed immediately after the deprivation of a special, military or honorary rank, class rank and state awards.

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