

The right of convicts in Russia to health protection

El derecho de los presos en Rusia a la protección de la salud

 Valery Konstantinovich Bakulin, Kazan Federal University, Faculty of Law, Criminal law Department, e-mail: Valerij.Bakulin@kpfu.ru.

 Lidia Vasilevna Bakulina, Kazan Federal University, Faculty of Law, Criminal law Department, e-mail: Lidia.Bakulina@kpfu.ru.

 Fedor Romanovich Sundurov, Kazan Federal University, Faculty of Law, Criminal law Department, e-mail: kafedra.ksu@yandex.ru.

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Abstract

This article essentially aims to investigate the right of convicts in Russia to health protection. The legal regulation of health protection and medical care for those sentenced to imprisonment at different stages of Russian statehood varied. For example, after the Magnitsky case, prison medicine in Russia was transferred to the responsibility of the Ministry of Health of the Russian Federation, which had a positive effect on protecting the right of convicts to health care. At present, the Russian penitentiary system is introducing mechanisms for telemedicine, preventive field examinations by narrow-profile civil healthcare specialists. The regulation of this procedure has many gaps. Accordingly, many questions arise that require theoretical understanding and practical application. The staff of a correctional institution considers forced feeding for prisoners in Russia as the provision of the personal safety of prisoners, i.e. causing physical harm to the convicted person during the procedure; taking compulsory medical measures or really ensuring the right of convicts to health care. For those sentenced to imprisonment, forced feeding is a malicious violation of the regime, in the form of disobedience to representatives of the administration of the correctional institution (part 1, Article 116, CEC RF); self-mutilation, i.e. deliberate harm to one's health (part 2, Article 102, CEC RF); attempted suicide; a form of blackmail.

Keywords: convicts, the right to health care, the mechanism for the exercise of the right, medical experiments, forced feeding.

Resumen

Este artículo tiene como objetivo fundamental investigar el derecho de los condenados en Rusia a la protección de la salud. La regulación legal de la protección de la salud y la atención médica para los condenados a prisión en las diferentes etapas de la condición de Estado ruso varió. Por ejemplo, después del caso Magnitsky, la medicina penitenciaria en Rusia se transfirió a la responsabilidad del Ministerio de Salud de la Federación de Rusia, lo que tuvo un efecto positivo en la protección del derecho de los condenados a la atención médica. En la actualidad, el sistema penitenciario ruso está introduciendo mecanismos para la telemedicina, exámenes preventivos de campo realizados por especialistas en salud civil de perfil estrecho. La regulación de este procedimiento tiene muchas lagunas. En consecuencia, surgen muchas preguntas que requieren comprensión teórica y aplicación práctica. El personal de una institución penitenciaria considera que la alimentación forzosa de los presos en Rusia es la garantía de la seguridad personal de los presos, es decir, causar daño físico a la persona condenada durante el procedimiento; tomar medidas médicas obligatorias o garantizar realmente el derecho de los condenados a la asistencia sanitaria. Para los condenados a prisión, la alimentación forzada es una violación dolosa del régimen, en forma de desobediencia a los representantes de la administración de la institución correccional (parte 1, artículo 116, CEC RF); automutilación, es decir, daño deliberado a la salud (parte 2, artículo 102, CCA RF); intento de suicidio; una forma de chantaje.

Palabras clave: convictos, derecho a la salud, mecanismo para el ejercicio del derecho, experimentos médicos, alimentación forzada.

Introduction

At present, the social rights of citizens are becoming the primary ones, along with personal rights, because the set of these rights first of all ensures a dignified life and free development of a person, which is mentioned in Art. 7 of the Constitution of the Russian Federation¹. When we talk about the right to life, we mean the right to health and vice versa. These are paired concepts. According to Bakulina, L.V. ² emphasizes, and we are in solidarity with him, that a number of proclaimed social rights and freedoms require special protection and guarantees from the state. Thus, social rights in the minds of citizens have the greatest value and are considered as a constitutional institution for ensuring a decent life. The exercise of these rights is guaranteed directly by enshrining in the Constitution of the Russian Federation, as well as by the Constitutional Court of the Russian Federation¹. The study of the mechanism for the implementation of the right of persons sentenced to imprisonment to health care in the theory of criminal executive law is essential for observing the principles of legality and humanism, ensuring the rights, freedoms and legitimate interests of convicts, as well as a comprehensive analysis of the institution of legal status in general.

Materials and Methods

The mechanism for the emergence of the legal status of persons sentenced to imprisonment is that during the period of serving the sentence, from the general legal status of the individual, which the convicts also possess, there is a withdrawal, restriction, duplication, specification and addition of their rights and obligations². As for the right of those sentenced to imprisonment to health care, it remains the same, because Part 6, Art. 12, CEC RF actually duplicates Part 1, Art. 41 of the Constitution of the Russian Federation. There are no exceptions or restrictions from the general legal status of an individual of the right to health care in relation to those sentenced to imprisonment, with the only exception - isolation from society. Practically persons sentenced to imprisonment have the right to receive all types of medical assistance. Receiving primary health care and specialized medical care is provided for by Part 6, Art. 12, CEC RF. The organization and provision of palliative and emergency (ambulance) medical care is regulated (paragraphs 125, 127) by the Internal Regulations of Penitentiary Institutions³.

Accordingly, Part 6, Art. 12, CEC RF should be subject to legislative adjustments and have the following wording: "Convicts, depending on the medical report, have the right to health protection, including all types of medical care provided for by law in outpatient and inpatient settings".

Therefore, it seems difficult to agree with the definition of the penitentiary institution for the provision of medical care given by O.Iu. Pestova, who understands this institution as a set of homogeneous legal rules, the subject of regulation of which is social relations arising in connection with the implementation of the national legal policy in the field of providing health care to persons serving sentences in places of confinement⁴.

We think that the definition should be about the provision of all types of medical care, and not just about medical and sanitary.

It should be emphasized that, according to a French researcher, penitentiary medicine should combine preventive medicine and treatment⁵.

In addition, in some cases, the legislator strengthens the guarantees of ensuring the right to health care for this category of citizens at the regulatory level. On the basis of Part 2, Art. 21 of the Constitution of the Russian Federation, no person can be subjected to medical, scientific or other experiments without his/her voluntary consent. The CEC RF also enshrines a provision according to which convicts cannot be subjected to medical, scientific or other experiments related to the testing of medicines, new methods of diagnosis, prevention and treatment of diseases, as well as biomedical research regardless of their consent (part 3, Art. 12)⁶.

On the other hand, the question arises: why convicts cannot use the constitutional right to be voluntarily subjected to medical, scientific and other experiments, which may contribute to the progress of medical science and biomedical technologies? Such a statement is especially relevant in the context of a pandemic declared by the World Health Organization. As we see it, these procedures must comply with certain conditions enshrined in international and domestic legal acts. The main conditions should include: voluntary informed written consent of the convicted person to conduct research; a socially useful goal that cannot be achieved in other ways; clinical testing on humans must be preceded by an animal experiment in a laboratory; minimization of possible complications for the convict participating in the experiment; the right of a convict participating in an experiment to terminate it at any stage. A prerequisite for conducting research and clinical approbation is the conclusion of the Ethics Committee and the permission of the Expert Council, created in 2015 under the Ministry of Health of Russia⁷.

Results

As elements of the mechanism for exercising the right of convicts to health care are: 1) legal prescriptions aimed at regulating the right of convicts to health care. These legal prescriptions are enshrined in regulatory legal acts of various legal force, as well as in international legal acts. Thus, the right to health and medical care is provided for in various articles contained in the UN Bill of Human Rights, as well as in other conventions, for example, the Convention against Torture, the Convention on the Rights of the Child⁸.

We are primarily talking about Art. 41 of the Constitution of the Russian Federation, containing the initial, fundamental provisions that enshrine the right of citizens to health protection and medical care and the federal law "On the basics of health of citizens in the Russian Federation", where Articles 18 and 19 duplicate the right to health protection and medical care⁹. The aforementioned law does not ignore such a category of citizens as those sentenced to restriction of freedom,

arrest, imprisonment. Part 1 of Art. 26 of this law states that those sentenced to these types of criminal punishments have the right to medical care, including, if necessary, in medical organizations of the state and municipal health care system, in accordance with the legislation of the Russian Federation. At the same time, we believe that the title and content of Article 26 of the above law "The rights of persons detained, taken into custody, serving a sentence of restraint of liberty, arrest, imprisonment or administrative arrest, to receive medical care" should have been amended.

First, those sentenced to restraint of liberty are not currently held in correctional institutions (correctional centers). This punishment is not related to isolation from society; accordingly, convicts can receive medical care at their place of residence in medical organizations of the state or municipal health care system, therefore the phrase "restriction of freedom" should be excluded from the article.

Secondly, the word "criminal" sentences should be added after the word "serving". An analysis of the criminal executive legislation reveals terminological inconsistencies that "destabilize" one of the principles of law - its formal definition. For example, Articles 4, 10, 16, etc. CEC RF use the concept of execution of sentences. As L.V. Bakulin and V.K. Bakulin noted in this context, section 2 of the CEC RF, part 2 of Art. 54, part 1 and part 3 of Art. 60.2, part 2 of Art. 60.1, and part 2 of Art. 60.2 of the CEC RF use the concept of execution of criminal sentences and propose, in accordance with the rules of unification, to use the concept of execution of criminal sentences in the penal legislation¹⁰. It should also be noted that in addition to the system of criminal and administrative penalties, in Russian legislation there is also a measure of criminal procedural coercion - house arrest, which is not a criminal punishment.

Regulatory environment is enshrined in the 2015 Nelson Mandela Rules, containing, inter alia, 12 rules related to the health care of prisoners. This international legal act states the obligation of the state to provide health care to prisoners. Prisoners must be provided with the same standards of health care that exist in the community. Without any discrimination based on their legal status¹¹.

2. The emergence of appropriate legal relations, that is, the beginning of the exercise of the right of convicts to health protection requires the presence of a legal fact as one of the elements of the legal regulation mechanism.

The fundamental legal fact that gives rise to criminal-executive legal relations in the execution of criminal sentences and the application of other measures of a criminal-legal nature is a conviction that has entered into legal force or the documents that amend it provided for in Art. 7 of the CEC RF.

As Part 6, Art. 12, CEC RF enshrines one of the fundamental rights of convicts, the right to health protection and to medical care, the will of the relevant subject of law, expressed in a legally significant act, can serve as the basis for the emergence of legal relations to exercise the right to health protection in the execution of criminal punishments. A legal fact may be

the appeal of a convicted person with a complaint (verified by the competent control and supervisory authorities with confirmation of the fact of violation of the right) about insufficient medical provision to the authorities exercising control and supervision in the field of the execution of criminal sentences.

Thus, the Federal Penitentiary Service of Russia received 6865 applications from convicts and their relatives concerning insufficient medical support in 2017, and 6,933 applications in 2018¹².

A legal fact for the application of the forced feeding procedure provided for in Part 4, Art. 101, CEC RF, in the event the convict refuses to eat and a threat to his life arises, the corresponding decision of the administration of the penitentiary is expressed in writing (for example, a written opinion of the doctor on the conduct of this procedure). By the way, forced feeding of convicts is prohibited in many countries of the world. But in the penal codes of Russia and Ukraine, this institution of law is provided. For the sake of fairness, it should be noted that the CEC of Ukraine allows for forced feeding of convicts only by a court decision, which the CEC of the Russian Federation does not provide for. On the basis of Part 3, Art. 116, CEC of Ukraine "Forced feeding of a convict who has declared his refusal to eat is prohibited. Forced feeding can be applied only on the basis of a court decision, adopted on the conclusion of a doctor, if the convicted person is threatened with a persistent health disorder and there is an obvious threat to his life"¹³. From our point of view, there are many gaps in the legal regulation of this institution. Accordingly, many questions arise that require theoretical comprehension and practical application.

3. The next element of the mechanism for exercising the right of convicts to health protection and to medical care is the so-called medical and sanitary legal relationship, which is formed based on the existing set of norms of criminal executive legislation that governs health protection and provision of medical, sanitary and specialized medical care (Part. 6 Art. 12 of the CEC, part 4 of Art. 100 of the CEC RF), the application of medical measures to convicts (Art. 18 of the CEC RF), medical and sanitary provision of those sentenced to imprisonment (Art. 101 of the CEC RF), etc.

Medical and sanitary legal relations represent a special type of legal connection between a legally defined circle of subjects. These legal relations in a civilized society are inherent in one way or another to all the penitentiary systems of the world¹⁴.

As the main subjects of criminal-executive legal relations are the administration of institutions and bodies executing criminal sentences and convicts, therefore, both subjects of criminal-executive legal relations are involved in the mechanism for exercising the right of convicts to health protection.

One subject (convicts) exercises his right to health protection (part 6, Article 12 of the CEC RF) by appeals in the form of applications, proposals, complaints to domestic and interstate bodies for the protection of human rights and freedoms (part 4, Article 12 of the CEC RF), petitions (part 6, part 7, Article 175 of the CEC RF). Another entity (administration of

institutions and bodies, medical workers, and in some cases the court (Part 1, Art.18 of the CEC RF)) ensures the exercise of the convict's right to health protection by placing the convict in CEC special medical units or medical penitentiary institutions (Part 1, 2, 3, 6, 7 of the CEC RF). One of the main tasks of the Directorate for the organization of medical and sanitary provision of the Federal Penitentiary Service of Russia is to protect the rights of convicts to health protection and to provide medical care. Consequently, employees of the medical and sanitary service and medical workers are also the subjects of criminal-executive legal relations with a certain range of powers and responsibilities. In the Penitentiary System (hereinafter - PS), 632 medical units, 147 paramedics and 69 medical health stations, 55 centers of medical and social rehabilitation, 73 military medical commissions, 74 centers of sanitary and epidemiological surveillance, 144 hospitals (including 65 tuberculosis hospitals, 5 psychiatric hospitals, 8 hospitals for providing medical care to employees of the Federal Penitentiary Service of Russia) ¹⁵.

4. The fourth element of the mechanism for exercising rights in accordance with the generally accepted classification in the theory of law is the acts of the implementation of the rights and obligations of subjects of legal relations for the implementation of all types of medical care in the penitentiary system.

The types of acts of exercising rights and obligations in the framework of medical and sanitary legal relations are quite diverse. They can be expressed in the form of representations, for example, if, while serving a sentence of imprisonment, it is established that the convicted person suffers from a mental disorder that does not exclude sanity, which is associated with a danger both for himself and others, the administration of the correctional institution directs court submission on the application of compulsory medical measures to such a convict (part 2, Article 18 of the CEC RF). They can be expressed in the form of a decision of the medical commission on the application of compulsory treatment by convicted persons with alcoholism, drug addiction, HIV - infected... (part 3, Article 18 of the CEC RF), as well as in the form of a medical report on the possibility of finding a convict for health reasons in cell-type rooms, single cell-type rooms, single cells (part 4, Article 117 of the CEC RF).

5. Acts of application of the law, that is, the stage of bringing to legal responsibility, is an optional element of the mechanism for exercising the right of convicts to imprisonment to health care. Subject to the above, situations of violation of the current legislation may occur in the process of exercising the right of convicts to health protection by the administration of institutions and bodies executing punishment, employees of the medical and sanitary service of the penal system.

The Federal Penitentiary Service Commission on departmental quality control and safety of medical activities (Order of the Federal Penitentiary Service of Russia dated May 27, 2016 No. 384) at 11 meetings considered 365 deaths (from diseases) of convicts detained in places of confinement who died in 2016. Six reviews were prepared on these cases, including on identified medical care violations. As a result, 44 employ-

ees of the medical and sanitary service of the penal system were brought to disciplinary responsibility ¹⁶.

Conclusion

Thus, the mechanism of exercising the right of those sentenced to imprisonment to health care is understood to mean a set of consistently organized legal means aimed at provision of all types of medical care during the period of serving a criminal sentence.

Conflict Of Interests

The authors declare that the provided information has no conflicts of interest.

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