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LEGAL PROBLEMS OF ACTIVITY OF THE INSTITUTIONS AND AGENCIES EXECUTING PUNISHMENT WITHOUT ISOLATION OF THE CONVICT FROM SOCIETY, IN THE CONSIDERATION AND RESOLUTION BY THE COURT OF ISSUES ASSOCIATED WITH THE EXECUTION OF THE SENTENCE

This article examines the legal status of the institutions executing punishment, for example, criminal-executive inspections, consideration and resolution by the court of issues related to the execution of the sentence. It is noted that the submission of the institution or agency executing punishment, as well as the documents attached to it, are used in the investigation by the court of the circumstances under consideration and resolution of issues related to the execution of the sentence. The authors noted the absence of procedural status of the institutions executing punishment, at the stage of enforcement in Russian legislation, what reduces their effectiveness.

Russia's integration to the international community within the framework of democratic transformation resulted to a radical reform of the domestic criminal, criminal procedure and criminal-executive legislation, bringing it into the line with international standards and the establishment of legal guarantees of the rights, freedoms and legal interests of citizens. In addition, Russian legal reform in accordance to one of its goals has to improve the quality and efficiency of all law enforcement agencies, including the institutions executing punishment.

Proper execution of the sentence of the court contributes to the protection of the rights and legal interests of individuals and organizations which are the victims of crimes, into the protection of a person from illegal and unreasonable restriction of its rights, into the correction of convicted. Thereby, the authority of a state and the respectful attitude of citizens toward the rule of law increase.

The reform of the penal system (PS), carried out in Russia, primarily aimed at humanization of responsibility and the widespread use of punishments, unrelated with the isolation of convict from society.

In particular, the Concept of development of the penal system until 2020, approved by the Federal Government on October 14, 2010 № 1772-p (the Concept), as the primary task distinguishes the «extension of the application sphere for penalties and other measures not involving the deprivation of liberty».

In the process of implementation of the Concept has been a steady trend of downward in court-ordered penalties connected with the deprivation of liberty, and the increase in the number of sentences without isolation from society, the execution of the majority of which are within the competence of the criminal-executive inspections (CEI) of the Federal Penitentiary Service (FPS of Russia).

However, during the implementation of the sentence by the institutions and agencies executing punishment, there are questions, the consideration and resolution of which with the current legislation is the exclusive competence of the court and is regulated by the Code of Criminal Procedure of Russia Federation (articles 396-401), by the Criminal Code of Russia Federation (articles 49, 50, 53, 73, 74, 80, 81, 82, etc..) and the Criminal Executive Code (articles 20, 44, etc..).

Most of the issues resolved by the court about the execution of the sentence are considered after submissions of CEI. Thus, it is advisable to review the activities of agencies and bodies executing punishment in the criminal proceedings in cases of the execution of punishment on the example of CEI.

The efficiency of the institutions and bodies executing punishment without isolation of convict from society in the field of criminal procedure activity, as well as the achievement of the purposes of punishment are largely dependent on the condition of the legislation regulating criminal procedure issues of enforcement.

At the same time as the practitioners of institutions of executing punishment, so and the scientists are still have many doubts and uncertainties as to the powers and organization of the institutions and bodies executing punishment which enter the criminal proceedings in the stage of execution of punishment.

According to official information of FPS of Russia, there is a lack of efficiency of CEI in some regions, not everywhere key indicators of their activities are carried out.

Currently, the institutions and agencies executing punishment, and their representatives, can not be attributed to the participants of criminal proceedings for the prosecution or the defense, as far as they act in the stage of criminal procedure activity concerning the execution of the sentence, as for the toughening of penalties applied to convict, so for the

replacement of the unserved part of the punishment with a milder penalty for convicted.

Category of other participants in criminal proceedings distinguishes their disinterest in decision-making. However, the institutions and bodies of executing punishment, on the contrary, argue for their part the petitions in the submission on matters related to the execution of the sentence, and therefore, are interested in the decision made by the court.

Empowerment of the agencies and bodies executing punishment, with criminal procedure rights and responsibilities during execution of the sentence, involves assigning them to the participants in the criminal proceedings, however, on the basis of the foregoing, it is not possible to correlate them with any of the existing categories of participants, provided by the Criminal Procedure Code of Russia Federation.

According to the art. 399 of the Criminal Procedure Code of RF, the majority of issues related to the execution of the sentence, is decided by the court after the submission of institutions and bodies executing punishment, that is in these cases, they are a kind of “plaintiffs” by analogy with the civil process, as far as they initiate a criminal procedure activity in consideration and resolution of court matters related to the execution of the sentence.

Thus, it seems appropriate for fixing of criminal procedural powers of institutions and bodies, executing punishment to introduce to the Criminal Procedure Code a new category of participants in criminal proceedings, with characteristics corresponding to the specifics of the activities carried out by these institutions and bodies in the consideration and resolution by the court issues related to the execution of the sentence, attributing them, by analogy with the civil proceedings (article 42 of the Civil Procedure Code of the Russian Federation), to the participants of the criminal proceedings, claiming independent demands in the order of art. 397 of the Criminal Procedure Code.

In connection with the abovementioned, believe it appropriate to supplement the Criminal Procedure Code with the norm regulating the criminal procedural status of institutions and bodies, executing punishment, and their representatives, as the participants in criminal proceedings claiming independent demands, as follows.

1) Expand the Criminal Procedure Code of the Russian Federation with the chapter 8¹ “Participants of the criminal proceedings, claiming their own demands” art. 61 “Institutions and agencies executing punishment” to read as follows:

“1. Institutions and agencies executing punishment upon entry into criminal procedural relationship, in the order prescribed by Section XIV of this Code should be authorized to:

- 1) to file objections and petitions including amending the previously filed submission;
- 2) to read the materials submitted to the court;
- 3) to participate in the proceedings through the use of videoconferencing systems;
- 4) to appeal against the decisions and actions of other participants of the proceedings on consideration and resolution by the court of the issues relating to the execution of the punishment;
- 5) to collect and to represent objects, written documents and other information confirming the appropriateness of the submission or claimed petition, including the selection of explanations from the convict and other persons about the execution of convicted procedure and conditions of a punishment;
- 6) to perform other powers related to the execution of the punishment under this Code.

2 Institutions and agencies executing punishment when entering the criminal procedural relationship, in the order prescribed by Section XIV of this Code obliged:

- 1) receiving a copy of the sentence, ruling or order of the court with the order about its execution, at term no later than one day from the moment of the receipt, notify the court about the acceptance of the sentence, ruling or order of the court for execution;
- 2) in the execution of the sentence, ruling or order of the court to notify the convicted person if he or she has reasons to supply a petition to the court in accordance with paragraphs 3 (in accordance with the second part of article 78 of the Criminal Executive Code of the Russian Federation), 4, 5, 6, 9, 11 – 15 of article 397 and the first and second parts of article 398 of this Code;
- 3) to submit to the court a petition about the conclusion of the convicted in custody for a period of not more than 30 days prior to further consideration of the question of replacing the unserved part of the punishment with more severe form of punishment for eight hours before the expiration of the period of detention of the convicted person.

In the consideration and resolution by the court of issues related to the execution of the punishment, the rights and obligations of the institution or agency executing punishment are carried by representatives.”

One of the reasons for appointment of the court session in the execution of the sentence in accordance with art. 399 of Criminal Procedure Code of RF is a submission to a court of an institution or agency executing punishment, and the supporting documents may be correlated with legal grounds necessary for the resolution of a number of issues

indicated in the art. 397 of Criminal Procedure Code of RF. I.e. these documents serve as a reason for CEI to enter in criminal proceedings regarding execution of the punishment.

However, this submission is not a procedural document and should be compiled outside of the criminal procedure activity.

In this case, at the stage of execution of the punishment a special subject of proof indicated in the art. 397 of Criminal Procedure Code of RF may be distinguished by analogy with the stage of a criminal case initiation.

During the criminal proceedings on the execution of the sentence for each of the questions set by art. 397 of Criminal Procedure Code of RF, it is necessary to establish certain circumstances, which are directly regulated in the criminal procedure legislation, for example, willful evasion from punishment or systematic evasion, and the court commences the study of certain documents and information, according to which it takes the decision during the proceedings.

Thus, for the implementation of special proof on the stage of execution of a punishment, it is necessary to have a source of procedural circumstances that should be established, which is the submission of institution and agency executing punishment, represented to the court on questions concerning the execution of a sentence.

As L.A. Shabalina notes, “in resolving of issues related to the execution of the sentence, the main source of information for the court are official documents (information, help, conclusions of the administrative commissions, etc.) submitted by convicted and by institutions and agencies executing punishment, which the court examines directly during the court hearing. “I.e. the consideration and resolution of court matters related to the execution of the sentence, it is necessary to talk about a specific subject of proof¹.

So, on the basis of documents submitted by the institution or agency executing punishment, the court should establish the presence or the absence of the circumstances provided in the art. 397 of Criminal Procedure Code of RF, which, in fact, are the subject of proof in criminal proceedings concerning the execution of the sentence.

Thus, for resolution by a court of the issues relating to execution of the sentence, it is necessary to establish the circumstances specified in the submission of institution or agency executing punishment, in the appeal of the convicted, and confirmed with information contained in the

¹ Шабалина, Л.А. (2012). Полномочия суда в обеспечении прав, свобод и законных интересов осужденного при рассмотрении вопросов, связанных с исполнением приговора. *Человек: преступление и наказание*, 1, 32-34.

documents, which an institution or agency executing punishment, a convicted, an advocate and a prosecutor should collect and submit to the court..

Herewith, the fixation of the form of a submission made to the court by the institution or agency executing punishment in the Criminal Procedure Code of RF allows to use all these information in proceedings.

It is also advisable to provide the opportunity of CEI for permanent work with a personal file of the convicted, when the institution or agency executing punishment directs submission to the court for its decision on the appointment of the hearing; the opportunity to submit a personal file of the convicted for a certain period of time necessary for the court to become familiar with the case, after what to oblige the court to return the convict's personal file after the decision on the appointment of the hearing, herewith to present to the institution or agency executing punishment, a list of copies of the documents from the personal file of convicted person, necessary for the court to consider and resolve the issue related to enforcement of the sentence.

Thus, the submission of the institution or agency executing punishment, as well as the documents attached to it, are used by the court in the investigation process of the circumstances under consideration and resolution of issues related to the execution of the sentence.

Although this submission is made not by a party of the process, but at its basis, the court initiates a criminal procedure on the execution of the sentence and examine during the trial, attached to it documents, thereby establishing the presence or absence of circumstances specified in the art. 397 of Criminal Procedure Code of RF, which lead to a change of the order and conditions of serving of the punishment by prisoners, as well as the measures under criminal law.

The submission of the institution or agency executing punishment, can be compared with the statement of offense, drawn up at the stage of a criminal case initiation, which as well as the submission is made before the start of criminal proceedings, but has a procedural form.

Requirements set out in the art. 389.6 of Criminal Procedure Code of RF to the procedural form inherent in the appellate representation and appeal, which also can draw an analogy with the idea of the submission of institution or agency executing punishment on the consideration and resolution by the court of issues related to the execution of the sentence.

In the ruling of the Supreme Court of the Russian Federation on April 2, 2013 N 6 "On amendments to some decisions of the Supreme Court of Russian Federation," stated that on considering of the issues related to the enforcement of the sentence in order of articles 396 and 397 of

the Criminal Procedure Code of RF, the courts should ascertain all the circumstances which may affect the legality of taken decision in the part of definition of the term or the size of unserved punishment or conditions which cause the need for replacement of punishment in case of evasion from serving a punishment imposed by a court.

Also, on deciding whether an evasion from serving of compulsory works or corrective works, as well as restrictions on freedom is willful, the courts must check the validity of the application of CEI warnings to convict.

In addition, copies of the submission, as well as the documents attached thereto, directed to the prosecutor and the convicted person will give them the opportunity to get acquainted with the petitions and documents proving it.

As far as currently the prosecutor in accordance with the art. 399 of the Criminal Procedure Code of RF deprived of the opportunity to get acquainted with the documents submitted to the court, and thus equally participate at the hearing on issues related to the execution of the sentence. Providing to the prosecutor of this right will enhance the effectiveness of supervision over the legality of the criminal procedure in the execution of the sentence.

Proceedings in the court on hearing and deciding by the court of the issues arising from the execution of the sentence is carried out in the framework of an independent stage of the criminal proceedings, and has partially prescribed order and features fixed in the art. 399 of the Criminal Procedure Code of RF, i.e. it has no a sporadic character as a judicial grievance procedure under art. 125 of the Code, but has a repeated the so-called procedural nature, since the specific circumstances to be considered by the court at this stage, fixed by the art. 397 of the Criminal Procedure Code of RF.

Thus, the documents that directly initiate proceedings in the court on hearing and deciding the issues relating to the execution of the sentence and entering into a criminal procedure should have prescribed by in the Criminal Procedure Code of RF procedural form.

In connection with the foregoing, it is proposed to add the article 399 with a part 4.2 and to read as follows:

«The submission of the institution or agency executing punishment, applied to the court on the issues set out in the art. 397 of the Criminal Procedure Code of RF and in the order provided by the art. 399 of the Criminal Procedure Code of RF shall contain:

- 1) the name of the court, to which the submission is filed;

2) the name of the institution or agency executing punishment which filed the submission;

3) the ground to file the submission in compliance with the federal laws regulating the execution of punishment;

4) the name, the first name, the date of birth, the place of registration, the place of residence of the convicted person in respect of which a submission is filed, as well as the name of the court which sentenced of the convicted person;

5) the arguments of the institution or agency executing punishment filed submission, as well as a list of documents justifying the petition stated in the submission;

Copies of the submission and of the documents filed to the court substantiating the petition claimed in the submission are sent to the convict at the actual place of residence and to the prosecutor by the institution or agency executing punishment in the day of filing of these materials to the court”.