DOI 10.52468/2542-1514.2022.6(3).63-79

ON THE RIGHT OF HEIRS TO INFORMATION ON THE DEATH OF REPRESSED AND SUBSEQUENTLY REHABILITATED CITIZENS

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Article info

Received –
2022 February 10
Accepted –
2022 June 20
Available online –
2022 September 20

Keywords

Law of the Russian Federation on rehabilitation, rehabilitation of citizens, political repressions, right to information, heirs of the repressed, history of political repressions, judicial practice, troughs to the Constitutional Court of the Russian Federation

This paper discusses the question of how exactly the norms of the Constitution of the Russian Federation and the Law of the Russian Federation "On the rehabilitation of victims of political repressions" work, and what difficulties heirs face in practice in exercising the right to information about the death of repressed and subsequently rehabilitated citizens.

The problem of obtaining objective information about the death of these citizens by relatives of repressed and subsequently rehabilitated citizens has a rather long and sad history. In this regard, using the historical method and the method of comparative legal analysis, the main stages in the development of these legal relations are determined, an analysis is made of the previously secret regulatory legal acts of the USSR of 1934-1988 in the field of providing relatives with information about the death of repressed and subsequently rehabilitated citizens.

The paper concludes that for 54 years from 1934 to 1988, the heirs of the repressed and subsequently rehabilitated citizens were not provided with truthful information about the causes and date of death of the actually executed citizens, as well as about the places from the burial place. But at the same time, despite the abolition of all illegal legal acts and other documents on this issue, they still continue to be applied in practice without delay.

The paper analyzes the current state of legal regulation in the field of exercising the right to information about the death of repressed and subsequently rehabilitated citizens, the practice of implementing these provisions of federal legislation by public authorities.

As a result of abuses on the part of archival authorities, the practice of courts of general jurisdiction to protect the rights of heirs in the exercise of the right to information about the death of repressed and subsequently rehabilitated citizens has become widespread. In particular, it is noted that courts of general jurisdiction refuse to satisfy the requirements to establish an objective date and cause of death of repressed citizens as a result of execution (instead of fictitious dates and natural causes indicated in death certificates issued in 1955-1962), based on the fact that there is no reliable and proper evidence in the case files, testifying to the execution of the sentence to shoot the repressed citizen.

Given the negative experience of the heirs in the exercise of the right to information about the death of repressed and subsequently rehabilitated citizens, this paper attempts to substantiate the prospects for filing a complaint with the Constitutional Court of the Russian Federation on this issue. In particular, the paper concludes that part five of Article 11 of the Law of the Russian Federation "On the Rehabilitation of Victims of Political Repressions", which provides for the possibility of an arbitrary refusal by the archival authorities to inform the applicants of the time, causes of death and place of burial of the rehabilitated simply because of the lack of relevant information, without giving the reasons for the loss of documentation or evidence of such loss in conjunction with the provisions of parts 1 and 3 of Article 56 of the Code of Civil Procedure of the Russian Federation does not comply with the Constitution of the Russian Federation.

In conclusion, attention is drawn to the fact that the cases of establishing the facts of the death of repressed and subsequently rehabilitated citizens on a certain date and under certain circumstances as a result of execution are not simple and not isolated. Such cases actually concern an indefinite circle of persons and are of particular public interest.

ISSN 2542-1514 (Print)

I. Introduction.

In accordance with part 4 of Article 29, part 2 of Article 24 of the Constitution of the Russian Federation, everyone has the right to freely seek and receive information in any legal way; state authorities, their officials are obliged to provide everyone with the opportunity to familiarize themselves with documents and materials directly affecting their rights and freedoms, unless otherwise provided by law.

On the basis of the fifth part of Article 11 of the Law of the Russian Federation of 18.10.1991 No. 1761-1 "On rehabilitation of victims of political repression" (hereinafter – the Law of the Russian Federation on Rehabilitation), at the request of the applicants, the bodies that archive cases related to repression (hereinafter – archival bodies) are obliged, if they have relevant information, to inform them of the time, causes of death and the burial place of the rehabilitated.

In this paper, we will try to consider how exactly these norms of the Constitution of the Russian Federation and the Law of the Russian Federation on Rehabilitation work, and what difficulties heirs face in practice when exercising the right to information about the death of repressed and subsequently rehabilitated citizens.

We will consider the development of this issue using the historical method and the method of comparative legal analysis of normative legal acts of the Russian Federation of different years in order to determine the main stages of the development of these legal relations. In addition, the paper analyzes the current state of legal regulation in the field of realization of the right to information about the death of repressed and subsequently rehabilitated citizens, the practice of implementing these provisions of federal legislation by public authorities, as well as the practice of courts of general jurisdiction in this area. Taking into account the negative experience of heirs in exercising the right to information about the death of repressed and subsequently rehabilitated citizens, in this paper we will try to justify the prospects of filing a complaint to the Constitutional Court of the Russian Federation on this issue.

The issues of exercising the right of heirs to information about the death of repressed and subsequently rehabilitated citizens are poorly studied in the scientific and educational legal literature. At the same time, these problems were repeatedly considered in historical literature and journalism by persons who were closely involved in the search for truthful information about the causes of death of repressed and subsequently rehabilitated citizens (see, for example: [1, 2, 3]).

Traditionally, in the science of constitutional law, the right of a citizen to freely seek and receive information in any legal way is considered in general terms in the context of Federal Law No. 149-FZ of 27.07.2006 "On Information, Information Technologies and Information Protection", Law of the Russian Federation No. 2124-1 of 27.12.1991 "On Mass Media", Federal Law No. 8 of 09.02.2009-Federal Law "On Ensuring access to information on the activities of state Bodies and Local Self-Government Bodies", etc. The dissertation studies of Ageev A.S. [4], Vakhrameeva R.G. [5], Valitova L.I. [6], Lapo L.G. [7], Gadzhieva Z.R. [8], Pogorelova M.A. [9] are devoted to general issues of the realization of the right to information, as well as issues of obtaining information from public authorities., Gavrishova D.V. [10], etc.

At the same time, in the legal literature, the issues of rehabilitation of victims of political repression are covered in a very small volume and only in general terms. Basically, the problem of rehabilitation is considered in criminal procedural law in terms of the analysis of Chapter 18 of the Criminal Procedure Code of the Russian Federation "Rehabilitation", which does not relate to the subject of this study. A limited number of dissertation studies by Petrov A.G. [11], Yashina A.A. [12], Murtazalieva V.Yu. [13], Klimova G.Z. [14], etc. are devoted to the problems of rehabilitation of victims of political repression. However, in these works, only general issues of the concept of political repression and rehabilitation of victims of these repressions, the grounds and procedure for their rehabilitation are considered. In addition, certain

aspects of the rehabilitation of victims of political repression are considered in the works of Chornovol E.P. [15], Vorobyov S.M. [16], Dzhantemirova G.R. [17], Petrov A.G. [18], Timush A. [19], Solopova E. [20], etc.

In this regard, there are currently no scientific legal works in the field of studying the problem of the right of heirs to information about the death of repressed and subsequently rehabilitated citizens in the legal literature. In this regard, this work is relevant and new.

II. The history of the issue.

The problem of obtaining objective information about the death of these citizens by the relatives of repressed and subsequently rehabilitated citizens has a rather long and sad history.

The general public was able to receive information about legal acts and other documents regulating relations in the sphere of the realization of the right of relatives or heirs to information about the death of repressed and subsequently rehabilitated citizens only in the 1990s after the adoption of Presidential Decree No. 658 of 23.06.1992 "On the removal of restrictive Labels from legislative and other acts that served as the basis for mass repressions and attacks on human rights." In accordance with this Decree, the President of the Russian Federation was instructed to declassify legislative acts, decisions of government, party bodies and departmental acts that served as the basis for the use of mass repressions and encroachments on human rights, regardless of the time of their publication. Declassification was also subject to information on the number of persons unreasonably subjected to criminal and administrative penalties and other measures of state coercion for political and religious beliefs, on social, national and other grounds, minutes of meetings of extra-judicial bodies, official correspondence and other materials directly related to political repression.

We will try to briefly consider the provisions of the main legal acts and other documents, according to which information about the death of repressed and subsequently rehabilitated citizens was provided to heirs or relatives.

1. Initially, during the period of mass political repressions of the 1930s, relatives were not informed at all about the death of repressed citizens, including as a result of the execution of a sentence to capital punishment in the form of execution. The main normative legal act in this area was the resolution of the CEC of the USSR dated 01.12.1934 "On Amendments to the existing Criminal Procedure Codes of the Union Republics" (hereinafter referred to as the CEC Resolution of 1934), adopted as a result of the murder of S.M. Kirov. On the basis of the said Resolution of the CEC of 1934, it was prescribed during the investigation and consideration of cases of terrorist organizations and terrorist acts against employees of the Soviet government: the investigation of these cases should be completed within no more than ten days; the indictment should be handed over to the accused one day before the case is considered in court; cases should be heard without the participation of the parties; cassation appeal of sentences, as well as filing petitions for clemency, not to allow; the sentence to capital punishment to be carried out immediately upon sentencing.

2. The first legal act regulating the procedure for providing information to relatives about the death of repressed citizens was the order of the NKVD of the USSR dated 05/11/1939 No. 00515 "On issuing certificates on the whereabouts of arrested and convicted persons". In accordance with this order, all the heads of the NKVD bodies were instructed to organize the issuance of certificates to citizens' requests for the whereabouts of their close relatives arrested and convicted in the affairs of the NKVD bodies within a decade. Certificates should be issued only orally. In relation to those convicted by the Military Collegium and troika of the NKVD (NKVD) to capital punishment, maintain the existing procedure for issuing certificates, issuing them only through 1 Special Department.

3. What exactly the above-mentioned "existing order" meant can be found out from the memo on the procedure for issuing certificates on persons sentenced to capital punishment, the head of the 1st special department of the NKVD of the USSR, Colonel A.S. Kuznetsov, addressed to the People's Commissar of Internal Affairs of the USSR,

ISSN 2542-1514 (Print)

Beria L.P., prepared in September 1945. According to the existing procedure, when issuing certificates on persons sentenced to capital punishment by the former NKVD - NKVD troika, the Military Collegium of the Supreme Court of the USSR with the application of the law of December 1, 1934 and in a special order, it is indicated that these persons were sentenced to imprisonment for 10 years with confiscation of property and sent to camps with a special regime, with the deprivation of the right of correspondence and broadcasts.

These are the so-called "10 years of camps without the right of correspondence", which were reported to the relatives of actually executed citizens on the basis of the CEC Resolution of 1934. But by 1945, these 10 years of camps without the right of correspondence began to end, but no one returned from there. And people continued to wait and look for their relatives. It was necessary to answer them something…

Therefore, Colonel Kuznetsov A.S. noted the following. Due to the expiration of the ten-year period, numerous applications from citizens for the issuance of certificates on the whereabouts of their close relatives convicted in the above-mentioned order are received by the NKVD - NKVD reception offices. Reporting on the above, I would consider it necessary to establish the following procedure for issuing certificates on persons sentenced to capital punishment. Henceforth, in response to requests from citizens about the whereabouts of their close relatives sentenced to capital punishment in 1934-1938 by the former NKVD -NKVD troika, the Military Collegium of the Supreme Court of the USSR with the application of the law of December 1, 1934 and in a special order, inform them verbally that their relatives, while serving their sentence, died in places of detention of the NKVD of the USSR.

Beria L.P., according to the above-mentioned memo from the head of the 1st special department of the NKVD of the USSR, Colonel Kuznetsov A.S., instructed his deputies Merkulov V.N., Chernyshov V.V. and Kobulov B.Z. to jointly consider these proposals and give their conclusion. These deputies prepared their memo, where they noted the following. On the merits of the proposal of the head of the 1st special department of the NKVD of the USSR, Colonel Comrade. Kuznetsova A.S. on the procedure for issuing certificates to family members of persons sentenced to capital punishment by the former NKVD troikas, the Military Collegium of the Supreme Court of the USSR and in a special order, we consider it expedient to continue to inform citizens of the whereabouts of their relatives sentenced to VMN in 1934-1938 by the former NKVD troikas, the Military Collegium of the Supreme Court of the USSR and in a special order, to inform them verbally, that the convicts died in places of detention.

Simultaneously with the issuance of certificates of death of prisoners, to announce to their relatives that they can receive the relevant certificates in the OAGS. The 1st special departments of the NKVD - NKVD should report the issuance of the above-mentioned certificates to the OAGS, and the latter, if relatives of convicts contact them, issue death certificates according to the established procedure. On the specified memo, L.P. Beria imposed a resolution on 29.09.1945: I agree.

This is how the vicious practice of hiding the truth about the causes and dates of death of repressed citizens to their relatives was consolidated. The heirs of the citizens who were actually shot began to be informed about the fictional natural causes of their death in places of imprisonment while serving their sentence.

4. At the same time, despite the death of Stalin I.V., the onset of the Khrushchev thaw and the process of rehabilitation of illegally repressed citizens, their relatives were still not told the truth about the executions, so as not to undermine confidence in the current government.

The directive of the Chairman of the KGB under the Council of Ministers of the USSR Serov I.A. dated 08/24/1955 No. 108ss "On the procedure for responding to citizens' requests about the fate of those sentenced to capital punishment in the 30s" (hereinafter referred to as the Directive of 1955) was adopted, according to which the following procedure for considering citizens' applications with requests about the fate of persons, convicted to VMN. In response to requests from citizens about the fate of those convicted of counterrevolutionary activities to the VMN by the former OGPU Collegium, the OGPU PP troika and the NKVD - NKVD

and a Special Meeting of the NKVD of the USSR, the KGB bodies inform orally that those sentenced to capital punishment were sentenced to 10 years of correctional labor camps and died in places of detention. At the request of relatives of rehabilitated citizens, the death of those sentenced to capital punishment is registered in the registry offices at their place of residence before arrest, after which the relatives are issued a standard death certificate of the convicted person. Instructions to the registry offices on the registration of the death of convicts are given by the KGB through the police departments. They report: surname, first name, patronymic, year of birth and date of death of the convicted person (determined within ten years from the date of his arrest), cause of death (APPROXIMATE) and place of residence of the convicted person before arrest.

Thus, in the 1950s, the issuance by civil registration authorities to the heirs of repressed and subsequently rehabilitated citizens of death certificates of these citizens with fictitious dates of death and causes of death became widespread. The basis for this was the documents of the state security agencies. At the same time, the dates of death were determined, as a rule, by the period of the Great Patriotic War from 1941 to 1945 on the principle of "war will write everything off". The causes of death, instead of execution, were natural from a variety of diseases as far as fantasy allowed (kidney inflammation, heart disease, cardiosclerosis, purulent meningitis, etc.).

5. The official note of the Chairman of the KGB of the USSR Semichastny V.E. to the Central Committee of the CPSU dated December 26, 1962 contains an analysis of the implementation of the 1955 Directive. In particular, it states: "The establishment of this procedure in 1955 was motivated by the fact that a large number of persons were unreasonably convicted during the period of mass repression, therefore, the report on the actual fate of the repressed could negatively affect the situation of their families. The existing procedure for reporting fictitious data mainly concerns innocently injured Soviet citizens who were shot by decisions of non-judicial authorities during the period of mass repression.

As a result of the revision of criminal cases from 1954 to 1961, about half of the total number of those executed out of court were rehabilitated. In relation to most of them, relatives have been informed of false information about the death that allegedly occurred in places of deprivation of liberty.

After the work done by the Central Committee of the CPSU to expose the lawlessness committed during the cult of Stalin's personality, we consider it necessary to cancel the existing procedure for considering citizens' applications with requests about the fate of their relatives.

Informing citizens of fictitious dates and circumstances of the death of persons close to them puts the state security agencies in a false position, especially when publishing in the press the dates of death of persons who had services to the party and the state in the past. In addition, the registration of the death of executed persons by decisions of non-judicial bodies with the indication in the documents of fictitious terms of their stay in places of detention puts their family members in unequal conditions with family members of persons executed by court.

Soviet people are aware of mass violations of socialist legality and the motives for which in 1955 the procedure for informing relatives about the fate of repressed members of their families was established have disappeared.

Taking into account the above, it seems expedient to continue to respond to citizens' requests about the fate of their relatives sentenced to execution in a non-judicial manner, to verbally report the actual circumstances of the death of these persons, and to register their death in the registry offices by the date of execution, without specifying the cause of death, as do the Military Collegium of the Supreme Court of the USSR and military tribunals in respect of persons executed according to the sentences of the courts.".

6. Based on the results of the approval of the specified memo, the Central Committee of the CPSU issued an instruction of the Chairman of the KGB of the USSR, V.E. Semichastny, dated 02/21/1963 No. 20ss "On the procedure for considering citizens' applications about the fate of persons shot by decisions of non-judicial bodies." It provided that, according to citizens' statements about the fate of persons shot by decisions of the

ISSN 2542-1514 (Print)

OGPU Collegium, the OGPU PP triples and the NKVD – NKVD, a special meeting at the NKVD – Ministry of Internal Affairs of the USSR, the NKVD Commissions and the USSR Prosecutor, whose cases were investigated by state security agencies, the death of these persons should be registered in the registry offices at their place of residence before arrest the date of execution, without specifying the causes of death, and inform the applicants in which registry office they can obtain death certificates. Such decisions are made, as a rule, according to the statements of close relatives (parents, children, adoptive parents, adopted children, siblings, grandfather, grandmother, grandchildren, as well as spouse).

To inform orally the actual circumstances of death on the requests of relatives of persons shot in a non-judicial manner about the causes of their death; to applicants living in areas where there are no KGB apparatuses, to give oral answers about the causes of death through district police departments (offices), to whom to send appropriate notifications.

Regarding persons shot in a non-judicial manner, whose relatives have already been informed of their death as allegedly occurring in places of deprivation of liberty, the previously made decisions should not be changed.

What has changed with the adoption of this instruction? The new citizens were verbally told the true reasons and date of death of the repressed, and not fictitious, as before. For those who have already received certificates and death certificates with fictitious dates and causes of death, it was found that earlier decisions were not changed. In the death certificates issued again in the registry offices, it was proposed to indicate the actual date of death – the day of execution, without specifying its cause. Now they began to put a dash in the line "cause of death" instead of fictional natural causes. It was forbidden to indicate execution as a cause of death in the death certificates of repressed citizens.

7. The above instruction was valid until the issuance of the instruction of the Chairman of the KGB of the USSR Kryuchkov V.A. dated 10/26/1988 No. 52c "On the procedure for considering citizens' applications about the fate of persons shot by decisions of non-judicial bodies", which stated the following. According to citizens' statements about the fate of their relatives shot by the decisions of the OGPU Collegium, the OGPU and NKVD-NKVD triples, a Special meeting at the NKVD-the USSR Ministry of Internal Affairs, the NKVD Commission and the USSR Prosecutor, to report on the execution of the repressed, indicating the date of enforcement of the decision. At the same time, send appropriate notifications to the registry Office at the place of residence of these persons before arrest for registration of death by the date of execution, indicating the place and cause of death (execution). If the place of death is unknown, indicate in the appropriate column of the notice: "not established", and inform the applicants in which registry office they can obtain death certificates.

The same answers should be given to statements about the fate of those executed in a non-judicial manner, whose relatives have already been informed of their death as having occurred in places of deprivation of liberty. In these cases, the Registry Office authorities, on the basis of notifications received from the KGB authorities, issue new certificates to applicants indicating the actual dates and causes of death of the executed persons.

Thus, the above-mentioned document finally legally fixed the obligations of state security agencies to inform the relatives and heirs of repressed and subsequently rehabilitated citizens of the true, and not fictitious natural, causes of their death – execution, as well as to indicate the true, and not fictitious date of their execution. This rule was also extended to those relatives who had previously been given false information and given false death certificates of repressed and subsequently rehabilitated citizens with fictitious dates and causes of death.

Summing up the history of this issue, it should be noted that for 54 years from 1934 to 1988, the heirs of repressed and subsequently rehabilitated citizens were not informed of truthful information about the causes and date of death of actually executed citizens, as well as about the places of burial. But at the same time, despite the cancellation of all illegal legal acts and other documents on this issue, paradoxically, they still

ISSN 2542-1514 (Online)

continue to be applied in practice, which will be discussed below.

III. The current state of legal regulation and implementation practice.

Currently, heirs can exercise their right to information about the death of repressed and subsequently rehabilitated citizens on the basis of the following regulatory legal acts of the Russian Federation.

1. In accordance with parts three to five of Article 11 of the Law of the Russian Federation on Rehabilitation, rehabilitated persons, and with their consent or in the event of their death, relatives have the right to familiarize themselves with the materials of terminated criminal and administrative cases and receive copies of documents. Rehabilitated persons and their heirs have the right to receive manuscripts, photographs and other personal documents preserved in the files. At the request of the applicants, the archival authorities are obliged, if they have the relevant information, to inform them of the time, causes of death and place of burial of the rehabilitated.

2. The most important document in the area of interest to us is the Decree of the Government of the Russian Federation No. 1561-r dated 15.08.2015, which approved the Concept of state Policy to Perpetuate the Memory of Victims of Political Repression (hereinafter – the Concept). In particular, it notes that the rehabilitation process has not been completed in Russia since 1953. The exact number of repressed persons remains unknown. The necessary work has not yet been carried out to identify the burial sites of victims of repression. The ongoing attempts to justify the repressions by the peculiarities of the time or to deny them as a fact of our history are unacceptable.

In 1953, the Soviet leadership began the rehabilitation of victims of political repression. It was carried out according to the statements of victims of repression, as well as their relatives. In 1955 - 1962, according to the representations of the relevant authorities, the Registry Office issued death certificates with fictitious dates and causes of death to the relatives of the executed. Since 1963, the registry Office began to issue death certificates, in which the exact date of execution was indicated, but instead of the cause of death, a dash was put. At the same time, the places of mass executions and burials were not made public, and the documents about them remained classified.

Within the framework of perpetuating the memory of victims of political repression, the following activities are planned: archaeological and research work to identify mass graves of victims of political repression; memorialization, that is, the formation and development of memorial sites in places of mass graves of victims of political repression, perpetuating the memory of victims of political repression, etc.

According to E.P. Cheronovol, these provisions of the Law of the Russian Federation on Rehabilitation and the Concept enshrine the principle of transparency and information openness of rehabilitation of victims of political repression: "It determines the maximum openness to society and the media of the process of rehabilitation of victims of political repression and wide information about it of repressed citizens and members of their families, nations, nationalities, ethnic groups and cultural-ethnic communities of people." [15, p. 52].

3. In order to obtain objective information about the time, causes of death and place of burial of repressed and subsequently rehabilitated citizens, the heirs of these citizens need to work with archival documents. In this regard, the Order of the Ministry of Culture of the Russian Federation No. 375, the Ministry of Internal Affairs of the Russian Federation No. 584, the FSB of the Russian Federation No. 352 dated 25.07.2006 "On approval of the Regulations on the Procedure for Access to materials Stored in State Archives and Archives of State Bodies of the Russian Federation, Terminated criminal and administrative cases against persons subjected to political repression, as well as filtration andverification cases". Paragraphs 6, 7, 15 of this order provide that relatives of rehabilitated persons have the right of access to the materials of the relevant terminated criminal and administrative cases, as well as filtration and verification cases - on the basis of an appropriate application, written consent of the rehabilitated person to familiarize themselves with the case materials or a document confirming the death of the rehabilitated person,

ISSN 2542-1514 (Print)

and upon presentation of documents, certifying identity and confirming kinship.

The right to access the materials of terminated criminal and administrative cases, as well as filtration and verification cases, means providing the user with the opportunity to get acquainted with the documents in the cases, receive copies of them and use the information obtained during familiarization, taking into account the requirements of the legislation. Archive employees who store terminated criminal and administrative cases, filtration and verification cases are required to ensure that the user is familiar with case documents containing information about personal and family secrets, facts, events, circumstances of the private life of rehabilitated persons and persons against whom filtration and verification cases were conducted, allowing them to be identified as a person, with the exception of information subject to dissemination in the mass media in cases established by the current legislation of the Russian Federation.

Copying of documents contained in discontinued criminal and administrative cases, filtration and verification cases, at the request of rehabilitated persons and persons against whom filtration and verification cases were conducted, their relatives and heirs is carried out by the archives free of charge.

On the basis of this order, the heirs of repressed and subsequently rehabilitated citizens can receive information about their death in the form of such documents as: 1) copies of sentences on the use of capital punishment in the form of execution, extracts from the minutes of meetings of troika under state security bodies on execution, etc.; 2) documents on the execution of the sentence in the form of execution: certificates on the execution of sentences, acts of group executions, lists of those executed, other summary documents on the execution of sentences in the form of execution; 3) it is less often possible to obtain documents about the places of burial of the executed, since until now information about the places of mass executions and burials of the repressed is actually classified.

4. In order to restore historical memory and justice, the heirs of repressed and subsequently rehabilitated citizens may want to receive a new truthful certificate of their death instead of false death certificates of repressed citizens issued by registry offices in 1955 – 1962 with fictitious dates and natural causes of death.

In accordance with paragraphs 1, 2 of Article 69 of Federal Law No. 143-FZ dated 15.11.1997 "On Acts of Civil Status" (hereinafter – the Federal Law on the Registry Office), corrections and changes to civil status records are made by the civil status registration authority if there are grounds provided for by Law and in the absence of a dispute between interested parties. If there is a dispute between interested parties, corrections and changes to the civil status records are made on the basis of a court decision.

The basis for making corrections and changes to the civil status records is, among other things: a court decision or a document of the prescribed form on the fact of the death of a person who was unreasonably repressed and subsequently rehabilitated on the basis of the law on the rehabilitation of victims of political repression, if the death was registered earlier (hereinafter referred to as the document on the death of the rehabilitated person). The specified form of a document on the death of a rehabilitated person is established by Order of the Ministry of Justice of the Russian Federation No. 366, the FSB of the Russian Federation No. 591, the Ministry of Internal Affairs of the Russian Federation No. 818, the Ministry of Culture of the Russian Federation No. 739 dated 30.11.2010 "On approval of forms of certificates on the fact of death of a person unreasonably repressed and subsequently rehabilitated on the basis of the Law of the Russian Federation dated October 18, 1991 No. 1761-1 "On rehabilitation of victims of political repression".

On the basis of Article 73 of the Federal Law on the Registry Office, corrections or changes to the civil status record are made by the civil status record authority at the place of storage of the civil status record on paper, subject to correction or change. On the basis of the corrected or modified record of the civil status act, the applicant is issued a new certificate of state registration of the civil status act.

ISSN 2542-1514 (Online)

In practice, the heir can receive a new truthful death certificate of a repressed and subsequently rehabilitated citizen instead of a false one only on the basis of a document on the death of a rehabilitated person, issued, as a rule, by the archival body of the state security body. In this situation, archival authorities and registry offices are also reluctant to indicate in the documents on the death of rehabilitated persons and their death certificates the causes of death in the form of execution and the place of their burial.

At the same time, it is very difficult to obtain a document on the death of a rehabilitated person from an archival body in practice. To do this, the archival authority must have a full set of documents confirming both the existence of the sentence itself on the application of capital punishment to a citizen in the form of execution, and the execution of the sentence. In the absence of formal documents on the execution of a sentence in the form of execution, even if there is a sentence of execution, it becomes virtually impossible to obtain from the archival authority a document on the death of a rehabilitated person, which is the legal basis for issuing a new truthful death certificate of a repressed and subsequently rehabilitated citizen.

At the same time, the refusal to issue a document on the death of a rehabilitated person to the heirs is justified by the archival authorities by the inadmissibility of disclosing information constituting a state secret. At the same time, in accordance with Articles 2 and 5 of the Law of the Russian Federation dated 21.07.1993 No. 5485-1 "On State Secrets", state secrets are information protected by the state in the field of its military, foreign policy, economic, intelligence, counterintelligence and operational search activities, the dissemination of which may harm the security of the Russian Federation. Information about mass repressions does not fall under this concept of state secrets. Moreover, in accordance with Article 7 of the said Law of the Russian Federation, information about violations of human and civil rights and freedoms, about violations of the law by state authorities and their officials, are not subject to state secrecy and classification. In addition, as mentioned earlier, the Decree of the President of the Russian Federation No. 658 dated 23.06.1992 "On the removal of restrictive labels from legislative and other acts that served as the basis for mass repressions and encroachments on human rights" declassified legislative acts, decisions of government, party bodies and departmental acts that served as the basis for the use of mass repressions and encroachments on human rights, regardless of the time of their publication.

As a result of these abuses by archival authorities, the practice of courts of general jurisdiction to protect the rights of heirs in the exercise of the right to information about the death of repressed and subsequently rehabilitated citizens has recently become widespread.

IV. The practice of courts of general jurisdiction.

Refusals of archival authorities to familiarize themselves with the archival files of repressed citizens, to issue copies of documents from the archival files of repressed citizens when applying parts three and four of Article 11 of the Law of the Russian Federation on Rehabilitation are appealed in administrative proceedings according to the procedures established by the CAS of the Russian Federation. At the same time, such refusals are allowed in relation to the heirs of repressed but not rehabilitated citizens, or in relation to persons who are not heirs of repressed and subsequently rehabilitated citizens.

If the archival authorities refuse to issue to the heirs of repressed and subsequently rehabilitated citizens certain documents on the death of these citizens in accordance with part five of Article 11 of the Law of the Russian Federation on Rehabilitation (copies of the sentence of execution, copies of the document on the execution of the sentence; the document on the death of the rehabilitated, which is the basis for the issuance of a new truthful death certificate), the prospect of the appeal of such actions in court is very vague. Since, as already mentioned above, in accordance with part five of Article 11 of the Law of the Russian Federation on Rehabilitation, archival authorities are obliged to inform applicants of the time, causes of death and place of burial of the rehabilitated only if they have the relevant information. If they do not have such information, then the above-mentioned

ISSN 2542-1514 (Print)

obligation to provide it becomes virtually impossible to implement. And it is virtually impossible to oblige the archival authorities in court to provide the heirs of repressed and subsequently rehabilitated citizens with the above documents. At the same time, the archival authorities in court simply say: there are no documents, and it is impossible to check whether it is true or not!

This problem arose due to the fact that Article 11 of the Law of the Russian Federation on Rehabilitation after the word "must" was supplemented with the words ", if they have the relevant information," on the basis of the Law of the Russian Federation of 03.09.1993 No. 5698-1 "On amendments and additions to the Law of the RSFSR "On rehabilitation of victims of political repression". This formulation seems to us at least controversial, which will be discussed below.

We have already mentioned that in accordance with paragraph 1 of Article 69 of the Federal Law, if there is a dispute between interested parties, corrections and changes to civil status records are made on the basis of a court decision. In this regard, cases began to appear in the courts of general jurisdiction not only about the appeal by the heirs of the actions (inaction) of archival bodies in case of failure to provide them with documents on the death of repressed and subsequently rehabilitated citizens. Another category of cases has also appeared – cases on the establishment of facts of legal significance.

In the statements, the heirs who have not received the necessary documents from the archival authorities apply to the court with requests: 1) to establish the fact and cause of death of a repressed and subsequently rehabilitated citizen - as a result of execution of a sentence in the form of execution instead of fictitious natural causes and date of death; 2) to set the date of death of a citizen depending on the date of the sentence of execution; 3) to establish the place of death of a citizen depending on the place of the sentence of execution; 4) to recognize as untrue the death certificate of a citizen with fictitious natural causes and the date of death; 5) to oblige the registry Office to make appropriate changes to the record of the death of a citizen.

At the same time, in practice, courts of general jurisdiction refuse to satisfy such requirements, based on the fact that there is no reliable and appropriate evidence in the case materials indicating the execution of the sentence of execution of a repressed and subsequently rehabilitated citizen.

At the same time, in the process and complaints, the applicants justify that the specified evidence was not provided, lost or destroyed by the archival authority. The applicants go to court precisely because there are no documents in the archival authorities confirming the execution of the sentence. However, the absence of documents from the archival authority on the execution of the sentence should not mean that this sentence was not executed at all. And the absence of such documents should not prevent the restoration of the truth in court.

More than 80 years have passed since the repressions of the 1930s. In this connection, the evidence base for this category of cases is objectively lost due to the time factor and this process only intensifies with the long-term desire of the state to hide the unsightly historical truth. In this connection, the applicants could not have the indisputable evidence that would dispel all the doubts of the court, since the state purposefully concealed and destroyed such evidence for a long time.

In addition, the courts actually refuse to apply in these cases the legal acts and other documents of the USSR, which were mentioned above, confirming the urgency of execution of the execution sentence, as well as the issuance of death certificates of repressed citizens with fictitious causes and dates of death. It is as if they do not exist and have never existed, despite their provision by the applicants and references to them in statements, explanations and complaints. For example, the courts of general jurisdiction refuse even to recognize as well-known the fact specified in the Concept that in 1955 - 1962, the registry Office authorities, according to the representations of the relevant authorities, issued death certificates with fictitious dates and causes of death of the executed. Also, the courts refuse in practice to apply as

ISSN 2542-1514 (Online)

evidence the above-mentioned CEC Resolution of 1934, the Directive of 1955, etc.

I would like to draw your attention to the fact that such cases have a fundamentally important public significance not only for individual applicants, but also for millions of citizens of our country whose relatives were illegally repressed and shot. How can they seek justice in similar cases? In this regard, the applicants, having exhausted all domestic remedies, further appeal to the European Court of Human Rights.

V. The prospect of filing a complaint with the Constitutional Court of the Russian Federation.

Taking into account the evolving practice in courts of general jurisdiction in this category of cases, applicants have every reason to file a complaint with the Constitutional Court of the Russian Federation.

Thus, in accordance with part 4 of Article 29, part 2 of Article 24 of the Constitution of the Russian Federation, everyone has the right to freely seek and receive information in any legal way; state authorities, their officials are obliged to provide everyone with the opportunity to familiarize themselves with documents and materials directly affecting their rights and freedoms, unless otherwise provided by law.

According to the aforementioned part of the fifth Article 11 of the Law of the Russian Federation on Rehabilitation, at the request of applicants, archival authorities are obliged, if they have relevant information, to inform them of the time, causes of death and place of burial of the rehabilitated.

The establishment of the fact of the death of repressed and subsequently rehabilitated citizens at a certain time and under certain circumstances, namely: on a certain date as a result of execution of a sentence in the form of execution, is necessary for applicants solely for the purpose of restoring historical memory and justice, as well as obtaining a new truthful death certificate instead of a false death certificate, which provides that a citizen died on a fictional date from fictional natural causes. The establishment of the above fact determines the emergence of the personal non-property right of the heir to apply to the civil registration authorities to obtain a new truthful death certificate of the repressed and subsequently rehabilitated citizen.

At the same time, the emergence of this personal non-property right is made dependent by part five of Article 11 of the Law of the Russian Federation on Rehabilitation on whether the archival authorities have information about the time, causes of death and place of burial of the rehabilitated citizen or not. It is logical that in this situation, it is the court that should deal with cases of establishing facts of legal significance and assist such citizens in protecting their personal non-property rights in the absence of the above information, since in accordance with part 1 of Article 46 of the Constitution of the Russian Federation, everyone is guaranteed judicial protection of his rights and freedoms.

In accordance with Article 2, part 2 of Article 15, Article 53 of the Constitution of the Russian Federation, a person, his rights and freedoms are the highest value. Recognition, observance and protection of human and civil rights and freedoms is the duty of the State. State authorities and officials are obliged to comply with the Constitution of the Russian Federation and the laws. Everyone has the right to compensation by the State for damage caused by illegal actions (or inaction) of State authorities or their officials.

In this regard, it should be emphasized that it is human rights and freedoms, and not the rights and departmental interests of public authorities, that are recognized as the highest value in the Russian Federation. Therefore, the main constitutional duty of our state is: not the concealment of the truth about past illegal acts of state authorities, but the recognition, observance and protection of human and civil rights and freedoms. At the same time, the descendants of illegally repressed, shot and subsequently rehabilitated citizens have the right to compensation by the state for the damage caused by illegal actions (or inaction) of state authorities or their officials, at least in the form of restoring historical truth and justice, as well as obtaining truthful information about the facts of their execution, time, causes of death and place of their burials.

ISSN 2542-1514 (Print)

In accordance with part 3 of Article 67.1 of the Constitution of the Russian Federation, the Russian Federation ensures the protection of historical truth. At the same time, this constitutional establishment should concern not only attempts to revise the role of the Russian people in the Second World War, which is now rightly given special attention. This should also apply to the unfair correction of history, when some state authorities of the Russian Federation forget other historical facts, for example, about the Stalinist repressions of the 1930s-1950s and their numerous victims, circumstances that are well-known and do not need to be proved are not taken into account. In our opinion, historical truth is knowledge about the past, based on accurately confirmed any historical facts: not only positive, but also negative. Refusal of the courts to apply the resolutions of the CEC of the USSR of December 1, 1934 "On amendments to the existing Criminal Procedure Codes of the Union Republics", the directive of the Chairman of the KGB at the Council of Ministers of the USSR of August 24, 1955 No. 108ss, the memo of the Chairman of the KGB of the USSR V.E. Semichastny to the Central Committee of the CPSU of December 26, 1962, the Concept of state Policy to perpetuate the memory of victims of political repression, approved by the Decree of the Government of the Russian Federation dated August 15, 2015 No. 1561-r, etc. they directly testify to the selectivity and one-sidedness of our justice and the refusal to protect not only human and civil rights and freedoms, but also historical truth as a constitutional value of the Russian Federation. In this regard, such actions (inaction) contradict Part 3 of Article 67.1 of the Constitution of the Russian Federation.

In addition, this situation arose when applying part five of Article 11 of the Law of the Russian Federation on Rehabilitation in conjunction with parts 1, 3 of Article 56 of the Civil Procedure Code of the Russian Federation, providing that each party must prove the circumstances to which it refers as the basis of its claims and objections, unless otherwise provided by federal law. Each person participating in the case must disclose the evidence to which he refers as the basis of his claims and objections to other persons participating in the case, within the time limit established by the court, unless otherwise established by this Code.

Thus, the Civil Procedure Code of the Russian Federation, in the absence of information from archival authorities about the time, causes of death and place of burial of the rehabilitated person, actually imposes the obligation to prove the relevant facts on the heirs of repressed and subsequently rehabilitated citizens, and not on archival bodies that have lost the necessary documents.

As a result of such interpretation of the fifth part of Article 11 of the Law of the Russian Federation on Rehabilitation in conjunction with parts 1, 3 of Article 56 of the Civil Procedure Code of the Russian Federation, this led to the fact that the applicants go to court precisely because there are no documents in the archival authorities confirming the execution of sentences. However, the absence of such documents actually began to hinder the restoration of the truth in court. In this regard, the applicant's right to judicial protection has become virtually unrealizable.

The applicants were placed in an unequal position in relation to the State authorities, and such inequality was not compensated by the court within the framework of the adversarial principle. In this regard, there is an objective need to impose the obligation to provide evidence in such cases not only on the applicants, but also on archival bodies, as bodies that archive cases related to repression, since they did not ensure the safety of the relevant evidence. The specified evidence can be located ONLY in archival bodies, which, based on federal legislation, MUST possess them. In this regard, the imposition by the court of the obligation to prove the fact of the death of a repressed person from execution by sentence only on the applicants and the release by the court from proving this fact of archival bodies is illegal, unjustified and unfair. It should be assumed that failure to provide the above evidence for any reason (loss, destruction, retention, etc.) should be considered by the court as an abuse of the right on the part of the archival authority and not lead to negative consequences for the applicants, who in this situation acted reasonably and in good faith. At the same time, the

court does not take into account the opposite, namely, the failure of archival authorities to provide any evidence confirming their position on the natural causes of death of repressed citizens.

In this situation, it is appropriate to apply an analogy with parts 1 and 2 of Article 62 of the Code of Administrative Procedure of the Russian Federation, according to which persons participating in the case are obliged to prove the circumstances to which they refer as the grounds for their claims or objections, unless a different procedure for the distribution of evidentiary duties in administrative cases is provided for by this Code (for example, parts 8 and 9 of Article 213, parts 3 and 4 of Article 217.1, parts 9 and 11 of Article 226 of the CAS of the Russian Federation). The obligation to prove the legality of the contested normative legal acts, acts containing explanations of legislation and having normative properties, decisions, actions (inaction) of bodies, organizations and officials endowed with state or other public powers is assigned to the relevant body, organization and official. The specified bodies, organizations and officials are also obliged to confirm the facts to which they refer as grounds for their objections. In such administrative cases, the administrative plaintiff, the prosecutor, bodies, organizations and citizens who have applied to the court in defense of the rights, freedoms and legitimate interests of other persons or an indefinite circle of persons are not required to prove the illegality of the contested normative legal acts, acts containing explanations of legislation and having normative properties, decisions, actions (inaction).

Such an interpretation of the fifth part of Article 11 of the Law of the Russian Federation on Rehabilitation in conjunction with parts 1, 3 of Article 56 of the CPC of the Russian Federation also violates the following principles established by the practice of the Constitutional Court of the Russian Federation:

1) legislative regulation of access to court, including the definition of conditions and procedure for the exercise of the right to judicial appeal, should not cancel or diminish human rights and freedoms and the citizen, and their possible restrictions should be proportionate and conditioned by the need to protect constitutional values;

2) it should be taken into account that the right to judicial protection includes not only the right to appeal to the court, but also the possibility of obtaining real judicial protection guaranteed by the state and that one of the important factors determining the effectiveness of restoring violated rights is the timeliness of protecting the rights of persons involved in the case. A similar position is held by the European Court of Human Rights;

3) The Constitution of the Russian Federation does not imply that the right of everyone to receive information directly affecting his rights and freedoms, as well as the obligation of state authorities and their officials corresponding to this right to provide relevant information to a citizen, can be completely excluded - on the contrary, under all conditions, the established limits of restriction of this right, due to the content of information, must be observed; consequently, information received by state authorities, which, based on the Constitution of the Russian Federation and federal laws, cannot be attributed to restricted access information, by virtue of the direct effect of Article 24 (Part 2) of the Constitution of the Russian Federation, should be available to a citizen if the collected documents and materials affect his rights and freedoms, and the legislator does not provide the special legal status of such information in accordance with the constitutional principles justifying the necessity and proportionality of its special protection;

4) the public interests listed in Article 55 (Part 3) of the Constitution of the Russian Federation can justify legal restrictions on rights and freedoms only if such restrictions meet the requirements of justice, are adequate, proportionate, proportionate and necessary to protect constitutionally significant values, including the rights and legitimate interests of other persons, are not retroactive and they do not affect the very essence of constitutional law, i.e. they do not limit the limits and application of the main content of the relevant constitutional norms; in order to exclude the possibility of disproportionate restriction of human and civil rights and freedoms in a specific law enforcement situation, the norm must be formally

ISSN 2542-1514 (Print)

defined, precise, clear and clear, not allowing for an expansive interpretation of the established restrictions and, consequently, their arbitrary application;

5) the general legal criterion of certainty, clarity, and unambiguity of the legal norm follows from the constitutional principle of equality of all before the law and the court (Article 19, Part 1, of the Constitution of the Russian Federation), since such equality can be ensured only if all law enforcers have a uniform understanding and interpretation of the legal norm. The uncertainty of the content of the legal norm, on the contrary, allows for the possibility of unlimited discretion in the process of law enforcement and leads to arbitrariness, which means violation of the principles of equality and the rule of law;

6) ambiguity, ambiguity and inconsistency of legislative regulation inevitably prevent an adequate understanding of its content and purpose, allow the possibility of unlimited discretion of public authorities in the process of law enforcement, create prerequisites for administrative arbitrariness and selective justice, thereby weakening the guarantees of protection of constitutional rights and freedoms; therefore, violation of the requirement of certainty of a legal norm may well be enough for recognition of such a norm that does not comply with the Constitution of the Russian Federation.

Based on the above, we believe that part five of Article 11 of the Law of the Russian Federation on Rehabilitation, which provides for the possibility of arbitrary refusal of archival authorities to inform applicants of the time, causes of death and place of burial of the rehabilitated simply for lack of relevant information without giving reasons for the loss of documentation or evidence of such loss in connection with the provisions of Parts 1 and 3 of Article 56 of the Civil Procedure Code of the Russian Federation does not comply with the Constitution of the Russian Federation (Article 2, part 2 of Article 15, part 1 of Article 19, part 2 of Article 24, part 4 of Article 29, part 1 of Article 46, Article 53, part 3 of Article 67.1). The above provisions do not comply with the Constitution of the Russian Federation, as they contradict the requirements of legal certainty to the extent that they do not take into account the specifics of access to documents on repression and do not establish criteria for sharing the burden of proof and establishing standards of proof, and therefore allow courts to arbitrarily shift the burden of proving facts of legal significance from public authorities endowed with state or other public authorities and who have lost or failed to submit to the court relevant evidence in the form of documents or information, on applicants. The possibility of such an interpretation of the norm actually deprives the heirs of illegally repressed and subsequently rehabilitated citizens of an effective opportunity to establish the facts of the death of these citizens on a certain date and under certain circumstances: as a result of execution on the day of sentencing (and not from natural causes on fictitious dates) in court with the refusal of archival authorities to submit the relevant documents to the citizen and the court.

The Constitutional Court of the Russian Federation has so far only twice defended the rights of victims of political repression and their heirs . At the same time, the Constitutional Court of the Russian Federation in its Resolution No. 39-P dated 10.12.2019 rightly noted the following: "The Law of the Russian Federation "On the Rehabilitation of victims of Political Repression" is consistent with the requirements arising from the Constitution of the Russian Federation, its Articles 1 (Part 1), 2, 6 (Part 2), 18 and 55 (Parts 2 and 3), and the requirements expressed in the decisions of the Constitutional Court of the Russian Federation to comply with the principle of maintaining citizens' trust in the law and actions It is a special regulatory legal act aimed at implementing the provisions of Articles 52 and 53 of the Constitution of the Russian Federation., imposing on the State the obligation to protect the rights of victims from abuse of power. When adopting this Law, the federal legislator proceeded from the recognition that during the years of Soviet power, millions of people became victims of the arbitrariness of the totalitarian state, were subjected to repression for political and religious beliefs, on social, national and other grounds, and that Russia, as a democratic state governed by the rule of law, condemns the long-term terror and mass persecution of its people as incompatible with

ISSN 2542-1514 (Online)

the idea of law and justice.".

VI. Conclusions.

Thus, in this paper we have considered the question of what difficulties heirs face in practice when exercising the right to information about the death of repressed and subsequently rehabilitated citizens, provided for by the Constitutions of the Russian Federation and the Law of the Russian Federation on Rehabilitation. We found out that for 54 years the heirs of the repressed and subsequently rehabilitated citizens were not informed of the truthful information about the causes and date of death of the actually executed citizens, as well as about the places of burial. Despite the cancellation of all illegal legal acts and other documents on this issue, they still continue to be applied in practice.

The paper analyzes the current state of legal regulation in the field of realization of the right to information about the death of repressed and subsequently rehabilitated citizens, the practice of implementing these provisions of federal legislation by public authorities, as well as the practice of courts of general jurisdiction in this area. Taking into account the negative experience of heirs in exercising the right to information about the death of repressed and subsequently rehabilitated citizens, in this paper we have tried to substantiate the prospects of filing a complaint to the Constitutional Court of the Russian Federation on this issue.

In conclusion, I would like to draw attention once again to the fact that cases of establishing the facts of the death of repressed and subsequently rehabilitated citizens on a certain date and under certain circumstances – as a result of execution are not simple and not isolated. Such cases actually concern an indefinite circle of persons and are of special public interest. The fate of millions of our citizens who are heirs of illegally executed ancestors depends on the results of their resolution.

ISSN 2542-1514 (Print)

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ISSN 2542-1514 (Online)

BIBLIOGRAPHIC DESCRIPTION

Dityatkovsky M.Yu. On the right of heirs to information on the death of repressed and subsequently rehabilitated citizens. *Pravoprimenenie = Law Enforcement Review*, 2022, vol. 6, no. 3, pp. 63–79. DOI: 10.52468/2542-1514.2022.6(3).63-79. (In Russ.).