

AGEING OF CONVICTED PRISONERS: SOME PROBLEMS AND SOLUTIONS (DOMESTIC AND COMPARATIVISTIC ASPECTS)

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The subject of the article is the peculiarities of the execution of imprisonment in relation to the elderly (over 50 years old) as an independent legal institution of penitentiary law in Russia and abroad.

The purpose of the article is to identify the patterns and problems of the execution of punishment in the form of imprisonment in relation to elderly people (over 50 years old) in Russia and abroad, taking into account the growth trend of this category of prisoners and propose a legal solution to the problem.

Main tasks: (1) to determine using statistical indicators the change in the number of elderly prisoners and identify the main trend in quantitative indicators; (2) identify problems that arise in elderly prisoners due to the lack of legislative regulation of the organization of an accessible environment in correctional institutions; (3) conduct a comparative analysis of

the organization of medical care in relation to the elderly when serving a sentence of imprisonment in Russia and abroad; (4) determine ways to improve Russian legislation in the field of punishment in the form of imprisonment in relation to elderly prisoners.

Research methodology. When studying the tendency of aging convicts to imprisonment in Russia and abroad, an analysis of statistical data was used. The work is a comparative legal study as a result of the study of domestic and foreign experience in the execution of sentences in the form of imprisonment, as well as the penal policy of Russia and foreign countries in relation to elderly prisoners; specific sociological technique was used when conducting a survey of persons over 55 years old serving a sentence of imprisonment in Russia; the formal-legal method made it possible to formulate a number of proposals on the need to reform penitentiary institutions, taking into account the age characteristics of this category of convicts.

Main results and scope of their application. Firstly, the possibility of allocating a separate chapter to the PEC of the Russian Federation on the peculiarities of the execution of punishment in the form of imprisonment of elderly convicts is justified. Secondly, the definition of the concept of "accessible environment", as well as the peculiarities of medical care for elderly convicts, taking into account the relevant experience of foreign countries. Thirdly, there is a need to form legal institutions for the socialization and resocialization of elderly people (over 55 years old) during the period of serving criminal sentences in the form of imprisonment, taking into account age characteristics and foreign experience.

Conclusion. Age characteristics and health conditions have a direct impact on the correctional impact of those sentenced to imprisonment. Russian and foreign experience clearly show that at present there is no unified political and legal approach in relation to elderly prisoners, despite the general growth trend of this category of persons. In Russia and abroad, there is a need to build correctional institutions of a new type, which will take into account, among other things, the age characteristics of the convicts. In this case, it is necessary to start with the development of individual legal institutions.

1. Introduction

An obvious fact is an increase in the number of convicts of pre-retirement and retirement age, that is, persons over 50 years old, including those serving sentences of imprisonment¹. We estimate that neither domestic nor foreign penitentiary institutions are adapted to the needs of the elderly convicts. In accordance with the Concept for the Development of the Penal System of the Russian Federation until 2030² (hereinafter referred to as the Concept), the improvement and humanization of the penal policy are the key positions in the conceptual development of the field of criminal punishment. Currently, there are no comprehensive studies of the problems of the execution of punishment in the form of imprisonment in relation to the age category of convicts under consideration. Separate studies are devoted to the study of the health indicators of persons in penitentiary institutions [1], the mortality rate of persons entitled to early parole for health reasons [2]. In addition, a rather large number of complaints filed by convicts to the European Court of Human Rights [3] indicate the need to study the problem of organizing the execution of sentences of imprisonment in relation to elderly convicts, since due to disability with age, issues of loyalty, humane attitude, compliance with Art. 3 of the Convention for the Protection of Rights and Fundamental Freedoms (prohibition of torture, prohibition of inhuman or degrading treatment or punishment)³ are essential and require study. The

lack of theoretical and practical attention to elderly convicts is explained by the fact that they make up a relatively small proportion of the total number of people serving sentences in places of isolation. However, modern statistics demonstrate a clear trend in the growth of the number of elderly prisoners both in Russia and abroad. This fact confirms the relevance of studies of this kind. The addition of the relevant provisions of the Concept, in which elderly people (retirement and pre-retirement age) will be selected into a separate category of convicts, requiring special conditions for serving their sentences, will undoubtedly increase the effectiveness of legal regulation and the execution of sentences in the form of imprisonment by these persons.

2. An increase in the number of elderly convicts: posing a problem

Problems of elderly convicts are not often of public or research interest [4-5]. For example, in US prisons, they are primarily concerned about a decrease in the number of people who are serving sentences for crimes related to the distribution of drugs and non-violent offenses, since they form the basis of the "prison population." The US correctional authorities develop policies to combat the senescence of the "prison population," but there is insufficient research and empirical knowledge to shed light on this issue or the consequences of such public policy [6, s. 4]. The growing number of elderly prisoners is associated with the global trend of aging of the population and the revision of the retirement age in some states [7, p. 58-60].

The trend of an increase in the number of elderly convicts in the United States was outlined in 2001. Notably, in 2001, the proportion of elderly female prisoners in the United States surpassed that of elderly male prisoners, and since then this difference has become even more evident: in 2011, more than 18% of female prisoners and 16.5% of male prisoners were persons over 50 years old [6, s. 3]. So, in 2013 in the United States, the proportion of prisoners aged 50 years and older was 17.9%. By comparison, the proportion of prisoners in England

¹ Description of convicts by age at the time of the crime. Characteristics of persons held in adult correctional colonies. Federal penitentiary service: official website. - URL: <https://fsin.gov.ru/statistics/> (accessed date: 05.12.2022).

² Order of the Government of the Russian Federation of 29.04.2021 № 1138-r «On the Concept of the Development of the Penitentiary System of the Russian Federation for the Period until 2030». - URL: <http://pravo.gov.ru/> (accessed date: 05.12.2022).

³ European Convention for the Protection of Human Rights and Fundamental Freedoms ETS № 005 (Rome, November 4, 1950). Collection of

legislation of the Russian Federation. 1998. №20. Art. 2143.

aged 50 and over in the same year was 12%. The number of elderly inmates in English prisons has increased by about 25-30% over the past 15 years [8, s. 12].

Among the most significant factors of criminal behavior of elderly people, researchers consider the following:

- moral factor (uselessness to society, lack of work or favorite occupation, alcoholism) [9];
- social factor (hateful attitude of young people towards these persons, lack of succession of values among generations) [10];
- organizational and legal factor (lack of resocialization system after release, ineffectiveness of early release system) [11-13];
- economic factor (low financial position, the rate of the pension coincides with the subsistence rate) [7; 14-17];
- psychological factor (there is no need to correct, since they will still die in a correctional institution) [18-19].

Reduction in the number of persons sentenced to imprisonment in penitentiary institutions over the past 10 years has led to a proportional deterioration in the composition of convicts, which in turn requires the solution of the issue of ensuring conditions for the serving of sentences by elderly persons in accordance with international principles, providing the necessary educational impact [20, p. 21], solving employment problems [21, p. 76-78] as a mean of correcting convicts, creating conditions under which the punishment obtain a rehabilitation role [22, p. 272]. So, for example, according to Art. 104-1 of the European Prison (Penitentiary) Rules of 2006⁴, it is necessary to use special penitentiary institutions or departments of penitentiary institutions for certain categories of prisoners. The need for a new type of institution serving a custodial sentence for an elderly person is specifically highlighted in reports of the Prison Officers Association of England, including the

possibility of building special facilities for elderly convicts and the consideration of alternative programs in existing correctional facilities designed to carry out custodial sentences for elderly offenders. The increase in the number of elderly prisoners is a concern because it requires adjustment of the criminal and penal policies (expansion of the staff of prison public servants and revision of sentences for prisoners who have committed serious crimes will be required). In this regard, it is worth paying attention to the well-known "flexibility" of Anglo-Saxon law in solving problematic issues that have a legal solution. The lack of normative, casuistic law is still a characteristic feature of the legal systems of the common law family [23, p. 950].

3. Medical services for elderly prisoners

Serving a sentence of imprisonment by persons over the age of 50 contributes to the exacerbation of chronic diseases of convicts. The existing stretch of medical institutions in the penal system of Russia providing medical care to convicts over 50 years old faces problems of treating hybrid forms of diseases that progress in isolation (HIV + hepatitis + tuberculosis) [24, p. 33-35]. The data obtained as a result of the survey conducted within the framework of this study of convicts from 14 constituent entities of the Russian Federation (94 people) about the diseases of the elderly convicts spark interest. Thus, 46.8% of the surveyed convicts were prescribed treatment during the period of serving their sentences, 48.9% want to continue treatment after release, 57.9% are sick with an open form of tuberculosis. This is certainly a limited sample, but it reflects the fact that patients, including those with incurable diseases, and elderly convicts more than 50% of the total mass of people sentenced to imprisonment. At the same time, as it has been stated above in the Concept, section XI of "Medical provision and sanitary well-being of persons held in institutions of the penitentiary system" elderly people as a separate category of convicts does not consider, however, the last paragraph of this section declares a forecast for a decrease in mortality in institutions of the penitentiary system.

Another interesting fact is that the relapse after release among the considered category of

⁴ European Penitentiary Rules: Recommendation of the Committee of Ministers of the Council of Europe Rec (2006) 2. Electronic Fund of Legal and Regulatory-technical Documents. URL: <https://docs.cntd.ru/document/420361984>.

convicts is also due to the lack of a system for receiving medical care after release. So, S.H. Shamsunov and E.V. Ilyintsev come to the conclusion that the lack of information exchange between the medical and sanitary units of the Federal Penitentiary Service of Russia and medical organizations of the Ministry of Health of the Russian Federation creates a situation in which it is impossible to ensure proper continuity of medical support after release from places of deprivation of liberty, including elderly persons [25, p. 19-20]. This issue requires separate research and a legal solution. It is important to understand that after release of elderly persons without a permanent place of residence, they seek to enter the correctional institution again in order to receive medical services and material support from the state. Thus, a survey conducted within the framework of this study of persons over 55 years old serving sentences of imprisonment in criminal correctional institutions showed that 49.5% were employed before the crime, studied - 2.1%, received pensions - 35.1%. Taking into account the results obtained on the morbidity of elderly people and the fact that diseases are progressing in places of deprivation of liberty, we believe that the court, when deciding on the imposition of punishment or early parole of the convict due to the presence of a serious disease (including hybrid forms of disease), must take into account the personality and state of health of the convicted person in order to achieve correction as one of the goals of criminal punishment. It seems that such changes should be reflected in Art. 81 of the Criminal Code of the Russian Federation («Release from punishment in connection with illness»).

4. Accessible environment and foreign experience in providing medical care to elderly prisoners

It should be noted that the high level of disease in convicts is characteristic not only for domestic, but also for foreign penitentiary systems. For example, compared to other prisoners in the United States, there is a high prevalence of diseases among elderly people that can cause disability (including AIDS, tuberculosis, hepatitis B, C, hypertension), and a number of diagnoses in the field of mental health - serious depression and

post-traumatic stress disorder. The situation of several diseases is aggravated by the traumatic experience of imprisonment and the limited ability to receive medical care in foreign correctional institutions due to its high cost (and payment is made at the expense of personal funds of convicts), which contributes to the accelerated aging of prisoners and the aggravation of health problems. These risk factors for health and needs make the imprisonment of elderly persons expensive. It costs an average of \$34,135 a year to keep an inmate in the US and \$68,270 a year to keep an inmate aged 50 and over. The greatest costs for prisoners are due to the fact that medical treatment, including the arrival of a doctor, is provided by private institutions and is paid [26, p. 64].

Elderly convicts in isolation experience additional psychological suffering and need sufficient care. So, for example, 60% of convicts surveyed in Italian prisons reported that their health deteriorated or significantly deteriorated during the period of serving their sentences [27, s. 529]. According to the American Medical Association, prisoners over 55 years old have three chronic diseases on average and 20% of them suffer from mental illness [28, s. 9]. A survey conducted by Greek prisons among female prisoners to assess the availability and quality of health services provided, both inside and outside prisons, found that 46.5% of female prisoners were dissatisfied with the quality of services received. Most of the sample participants rated their current health status as moderate or poor/very poor (67.4%). During incarceration, women in Greek prisons suffer from mental disorders and have limited access to health care. Their state of health is moderate or poor and deteriorates while serving their sentences [29, s. 243].

The organization of medical care in Swiss prisons deserves special attention. Firstly, thanks to its federal structure, the legal basis for protecting the health of prisoners is organized at the cantonal level. In Switzerland, due to the federal arrangement (26 cantons), there are different models for the organization of prison health care, and they often depend on the appropriate institution. There are such regions in the francophone part of the country where health care is independent of the prison

administration. In the German-speaking cantons, medical care is often organized by the prison administration, thereby making medical personnel dependent on it. There are also mixed models with independent doctors and nurses working in prison. Secondly, the "prison population" in the country is relatively small, and especially a small number are older prisoners [8, s. 34].

Arising problems of older inmates are also related to the lack of an accessible environment (handrails, low beds and elevators) in correctional facilities. Prisons are ill-equipped to meet the medical, environmental and social needs of elderly prisoners. The specific health characteristics of this growing group of the prison population make us think about changing the conditions of their detention both in Russia and in foreign countries [8, s. 115]. Equipping each institution with the conditions of an accessible environment seems economically costly and, possibly, ineffective. However, in such a situation, the idea of including a progressive model of serving sentences by persons sentenced to imprisonment in the Concept seems quite attractive and more realistic (creation of «hybrid» penitentiary institutions) [30, pp. 103-104]. This idea is partially implemented in section VII of the Concept, which establishes the establishment of a project for the creation of joint-type institutions, provides for the modernization of the infrastructure, which allows creating decent conditions of detention in institutions of the penal system of Russia.

5. Conclusions and suggestions

A comparative legal analysis of the age of prisoners in different states shows a global trend in the growth of the number of older people held in places of detention. This quite reasonably indicates, firstly, the allocation in the penal law of an independent legal institution for the detention of elderly persons, and secondly, the need to adopt a separate departmental legal act regulating the peculiarities of the execution of sentences by correctional institutions in relation to elderly persons, the peculiarities of serving sentences by elderly persons, providing them with palliative care, providing an accessible environment in a correctional institution, etc.

Given consideration to the growing number of

aging prisoners in Russia and abroad, it is crucial to expand the use of non-custodial sentences and the placement of older offenders in correctional institutions, taking into account the identity of the elderly offender. This option of punishment without isolation from society applies to elderly persons for whom preventive supervision can be used as a measure of safety and prevention of reoffending. This can be implemented through the Probation Service.

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