

Organizational and Legal Issues of Prosecutor's Supervision of Noncustodial Penalties' Enforcement

Cuestiones organizativas y legales de la supervisión del fiscal de la aplicación de las sanciones no privativas de la libertad

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Abstract

The article deals with a set of issues related to the due course of law in the execution of punishments not related to isolation from society, and which have recently become widespread in the framework of the implementation of one of the directions of the state's policy in the field of combating crime - the expansion of types of punishments alternative to imprisonment. The author analyses the powers of the prosecutor's office as a guarantor of compliance with the rule of law in the field of prosecutorial supervision, the purpose of which is, on the one hand, to identify, suppress and prevent violations of the law in the execution of criminal sentences and prevention of recurrence of crimes, and on the other, to respect the rights and legitimate interests of convicts. The article covers the problems of legal regulation of the activities of the prosecutor when exercising supervision over the observance of laws by corrective services (hereinafter referred to as CS) when executing sentences that are not related to isolation from society. The practice of conducted inspections of CS was analysed; the difficulties of implementing the orders of the prosecutor's office in the execution of certain types of criminal punishments related to job quotas for the employment of convicts, using technical means of control and supervision applied to convicts, were identified. Options for resolving the identified problems are proposed.



Keywords: prosecutor's supervision, acts of prosecutor's response to the violation of the law, criminal executive inspections, punishments not related to social isolation, problems of execution of sentences, penal system.

Resumen

El artículo aborda un conjunto de cuestiones relacionadas con el debido curso de la ley en la ejecución de penas no relacionadas con el aislamiento de la sociedad, y que recientemente se han generalizado en el marco de la implementación de una de las direcciones de la política estatal en el campo de la lucha contra la delincuencia: la expansión de tipos de castigos alternativos al encarcelamiento. El autor analiza las atribuciones de la Fiscalía como garante del cumplimiento del estado de derecho en el ámbito de la fiscalización, cuya finalidad es, por un lado, identificar, reprimir y prevenir las violaciones de la ley en la ejecución de condenas penales y prevención de la reincidencia de los delitos, y por otro, respetar los derechos e intereses legítimos de los condenados. El artículo aborda los problemas de regulación legal de las actividades del fiscal cuando ejerce la supervisión del cumplimiento de las leyes por parte de los servicios correctivos (en adelante, CS) al ejecutar sentencias que no están relacionadas con el aislamiento de la sociedad. Se analizó la práctica de inspecciones realizadas de CS; Se identificaron las dificultades para implementar las órdenes de la Fiscalía en la ejecución de ciertos tipos de sanciones penales relacionadas con las cuotas laborales para el empleo de condenados, utilizando los medios técnicos de control y fiscalización aplicados a los condenados. Se proponen opciones para resolver los problemas identificados.

Palabras clave: fiscalización fiscal, actos de respuesta fiscal a la violación de la ley, fiscalizaciones ejecutivas penales, penas no relacionadas con el aislamiento social, problemas de ejecución de sentencias, sistema penal.

Introduction

The Federal Law "On the Prosecutor's Office of the Russian Federation" among the main areas of activity of the Prosecutor's Office defines supervision over the observance of laws in the execution of criminal sentences not related to imprisonment. Given the significant expansion in recent years of the application of criminal penalties, alternative to imprisonment, associated with the implementation of a number of legal acts aimed at humanizing punishment and reducing the imposition of sentences in the form of imprisonment, the need for a detailed study of the state of legality in their execution and the role of prosecutorial supervision in its provision.

Article 22 of the Criminal Executive Code of the Russian Federation establishes that prosecutorial supervision in this area is carried out by the entire system of the prosecutor's office in the Russian Federation (Safronov et al., 2019; Tabolina & Tabolin, 2020).

The feasibility of the study of the organizational and legal problems of the prosecutor's supervision over the legal nature of the execution of criminal penalties is dictated by the economic and socio-political changes taking place in modern society. The Federal Target Program "Development of the Penitentiary System (2018-2026)" and the UN Standard Minimum Rules for Non-custodial Measures set out the goal of oversight - to reduce the recidivism of crimes and return the offender to society with a minimum

likelihood of committing a new crime. Recidivism applies simply to reoffending and rearrest, reconviction, reincarceration, or a breach of supervision (for persons on probation or parole) are common measurements of recidivism. Recidivism rates measure the frequency with which the criminal justice system re-engages individuals. There are several ways to measure recurrence, and each measure is based on a somewhat different reinvolvement definition, giving a different picture of the problem at hand.

Drozдов I.S., having studied the main indicators of recidivism in sentences without social isolation, notes that within a year from the moment of release, every second convict commits a new crime, and "among all recidivists, the number of persons who committed crimes during the period of serving their sentences did not exceeds 49%, after deregistration - 46%, before registration - 5%" (Bury, 2015).

The relevance of the study is also due to the fact that the results of numerous prosecutorial inspections in the implementation of supervision in the area under consideration indicate an ineffective state of legality in the activities of CS. An urgent solution to these and other problems, through the proper organization of the considered branch of prosecutorial supervision, as well as the improvement of the relevant branches of legislation, will positively affect the activities of CS and will allow achieving the goals of criminal punishment.



Objective

The author discusses the powers of the Public Prosecutor's Office as an assurance of conformity with the rule of law in the field of prosecutorial supervision, the object of which is, on the one hand, to recognize, suppress and avoid breaches of the law in the execution of criminal penalties and to prevent the recurrence of crimes and, on the other hand, to respect the rights and legitimate interests of prosecution. The article covers the problems of legal control of the prosecutor's actions in the exercise of supervision by correction services over the observance of laws (hereinafter referred to as CS), in the execution of sentences that are not connected with exclusion from society.

Material and Methods

The main research methods were the fundamental dialectical method of cognition of social and legal phenomena, the formal-logical, systemic method of scientific knowledge, the method of analysis, as well as the system-structural and logical-legal methods. The use of the statistical method made it possible to identify the main results of the prosecutor's activity. The comparative legal method was also a means of studying the activities of the prosecutor's office to supervise the execution of laws in the sphere of the execution of sentences.

Various aspects of the problem of the execution of sentences without social isolation, including the issues of control over the activities of the relevant bodies and institutions, are considered (Kozachenko & Sergeev, 2013; Olkhovik, 2018; Shcherbakov et al., 2019; Teplyashin, 2010). The relevant foreign authors are (Barkow, 2009; Doherty, 2000; Green & Roiphe, 2017) and others. However, these works do not detail the conclusions on specific types of criminal punishment without isolation from society.

Results and Discussion

The specifics of the execution of sentences not subject to social isolation also affect the range of tasks that prosecutors must perform in the process of supervision.

The Order of the Prosecutor General of the Russian Federation No. 6 of January 16, 2014 "On the organization of supervision over the implementation of laws by the administrations of institutions and bodies executing criminal sentences, pre-trial detention centres during the detention of suspects and

accused of committing crimes" (hereinafter - the Order of the Prosecutor General) defines the tasks of prosecutor's supervision. O.N. Rubtsova group these tasks into organizational and essential. The first includes the tasks of the organizational plan, and the second - "tasks, the resolution of which is necessary for the implementation of prosecutorial supervision over the legality of the execution of criminal penalties not related to imprisonment" (Carlson & Garrett, 1999).

Some studies share the same opinion (Becker & Stigler, 1974; Borovyk, 2018; Paneyakh, 2014). The authors identify the following essential tasks: analysis of the state of legality during the execution of criminal sentences; application of preventive measures in order to prevent the commission of various kinds of violations in the process of executing criminal sentences; timely detection and suppression of violations of criminal and penitentiary legislation; control over the facts of elimination of revealed violations.

Let us conclude that the effectiveness of prosecutorial supervision is largely due to the proper organization of the work of the prosecutor's office, therefore "organizational tasks, in this case, are provisional in relation to supervisory ones" (Dobryakov, 2020; Kozybaeva et al., 2019; Miethe & Lu, 2005; Strossen, 1989).

Nikitin E.L. writes that "due to the fact that the supervision of the execution of laws is the main direction of prosecutorial and supervisory activities, a separate independent task of prosecutorial supervision in the form of supervision of the execution of sentences that are not related to the social isolation of convicts is further subdivided into a number of tasks that determine its implementation in general" (Plieva, 2013).

The order of the Prosecutor General, among the tasks of prosecutorial supervision over the execution of criminal penalties not related to social isolation, covers:

- 1) supervision over the execution of laws during the execution of sentences (compulsory work, correctional labour, fines, restriction of freedom, forced labour), as well as the organization of supervision over the behaviour of conditionally convicted persons, over the behaviour of convicts who have been granted a deferral of serving their sentences, as well as over the application means of correcting convicts;



2) supervision over the observance of the rights and legitimate interests of convicts serving sentences not related to social isolation.

A means of exercising prosecutorial supervision and solving problems of identifying and suppressing offences is such a form of control as inspection. The Order of the Prosecutor General establishes a quarterly frequency of inspections of compliance with the law in the execution of criminal penalties not related to the isolation of convicts from society, and other measures of a criminal law nature. At the same time, if the prosecutor's office receives information

about violations of the law, as well as in case of emergencies, a targeted or complex unscheduled inspection is carried out. However, as practice shows, the implementation of quarterly inspections is not sufficient, and it is advisable to provide for an increase in their number (from quarterly to monthly) in the specified order.

For a more specific assessment of the activities of the prosecutor's office in the execution of sentences not related to imprisonment, let us turn to its main indicators using the example of the Chuvash Republic, presented in Table 1.

Table 1
Basic prosecutor performance indicators in the Chuvash Republic (January-December 2019)

| Violation detected | Total | IC* | CS** | IAA*** | Other institutions involved in the enforcement of sentences |
|--|-------|-----|------|--------|---|
| 1 | 2 | 3 | 4 | 5 | 6 |
| Total: | 1285 | 3 | 154 | 221 | 299 |
| On the procedure for the compulsory work performance | | 0 | 36 | 15 | 184 |
| On the procedure for the execution of deprivation of the right to occupy certain positions or engage in certain activities | | 0 | 6 | 19 | 5 |
| On the procedure for the correctional labour implementation | | 0 | 23 | 18 | 82 |
| On the procedure for the execution of a restriction of freedom | | 0 | 18 | 15 | 0 |
| On the procedure for the enforcement of forced labour | | 3 | 0 | 0 | 0 |
| On exercising control over the behaviour of convicts with a delay in serving their sentences | | 0 | 1 | 0 | 0 |
| On the procedure for monitoring the behaviour of probationers | | 0 | 60 | 146 | 8 |
| other | | 0 | 10 | 14 | 20 |

* IC - Correction centers

**CS – Corrective Services

***IAA– Internal Affairs Agencies

The statistical data given in Table 1 show the structure and volume of violations detected in the work of CS during the execution of sentences not related to isolation from society (making the largest number): during compulsory work - 36, deprivation of the right to hold certain positions or engage in certain activities - 6, correctional labour - 23, restriction of freedom - 18. In the activities of correctional centres during the execution of forced labour, three violations were revealed in the past period.

Then there are violations of the procedure for exercising control over the behaviour of conditionally convicted persons - 60, and others, which we refer to, including violations in exercising control over the presence of a suspect or accused at the place of execution of a preventive measure in the form of house arrest - 10, and in fourth place - violations in the exercise of control over the behaviour of convicts with a delay in serving their sentences - 1.

Common violations in the activities of penitentiary institutions administrations are untimely registration of newly convicted persons; failure to fulfil actions to



control the observance by convicts of the conditions for serving sentences, their behaviour, the execution of duties imposed on them by the court, prohibitions and restrictions; failure to take measures to establish the whereabouts of those sentenced to the specified types of punishment; the formal state of educational work with convicts; unjustified application of penalties and incentives; untimely deregistration of convicts; failure to fulfil the responsibility of the penitentiary institution to bring to justice violators of the sentence serving regime; untimely submission to the courts of submissions to replace the punishment with a more severe one, etc.

Bodies of internal affairs, bodies authorized by law to revoke a permit to engage in relevant activities, local self-government bodies, as well as organizations the convicts work in are involved in supervision in this area. Indicators on the identified violations in the activities of these bodies are presented in columns 5 and 6 in the table below. The number of violations here is quite large for all types of criminal penalties and other measures of a criminal-legal nature, which indicates the ineffectiveness of exercising control in this direction.

The reasons for violations are not always associated with the fault of specific individuals. There are problems that do not directly depend on the staff of penitentiary institutions or employees of other organizations involved in the execution of the punishments in question, and similar situations arise in the exercise of supervision over persons released on parole (Antonov et al., 2019).

A frequent violation in the execution of a sentence of correctional labour is the untimely provision of a job to the convict. There is an objective explanation for this. In accordance with the current penal legislation, places of work are determined by the CS in agreement with local government bodies. However, the latter has no legal basis for setting quotas for jobs and imposing obligations on employers to provide jobs. In this regard, if the employer refuses to hire, the convicts do not actually find a job. A dead-end situation arises: on the one hand, the requirement of the law on the employment of convicts for correctional labour is not fulfilled, on the other hand, there is no legal mechanism for the timely and unhindered employment of convicts. The solution to this problem may be the presentation of appropriate quotas at the federal level, as provided for the disabled and other persons.

Another problem is observed in the execution of punishment in the form of restriction of freedom. During inspections, the prosecutor's office reveals

such a violation as non-use of technical means of supervision and control against convicts, which is due to objective reasons. The CS employees often complain about the poor quality of electronic bracelets, which either do not charge, or there is no network signal, or there are simply not enough units of these devices due to financial difficulties. In this situation, it is necessary to decide to abolish the use of technical means of supervision and control, as a result of which the prosecutor makes a submission to eliminate the violations.

All violations associated with the late fulfilment of certain duties of the penitentiary institution are often associated with the recent increase in the number of persons sentenced to punishments alternative to imprisonment, and, as a consequence, an increase in the volume of workload on the inspection staff. Employees are physically unable to timely fulfill the huge volume of their duties.

However, it is categorically impossible to exclude such factors as negligence, incompetence, indiscipline, connivance of the staff of the CS and employees of other organizations involved in the execution of punishments from the list of reasons for the violations under consideration.

The timely response of the control and supervision authorities in these areas will significantly improve the due course of law in the execution of criminal penalties not related to imprisonment.

Conclusion

The prosecutor's inspection usually reveals similar violations, which confirms the ineffectiveness of the supervisory functions of the prosecutor's office. The following urgent measures may become options for increasing the effectiveness of prosecutorial supervision in this area:

1. Publication of a special order of the Prosecutor General of the Russian Federation "On the organization of supervision over the execution of punishments not related to isolation from society".
2. Implementation of comprehensive inspections using an effective interaction algorithm for the CS with local authorities, police and other entities involved in the execution of punishments.
3. Increasing the authority of the activities of the prosecutor's office, which is possible only if, when prosecuting officials, prosecutors will consider both subjective and objective reasons that contribute to the occurrence of violations.



The presented scientific article does not pretend to reflect an exhaustive set of problems in prosecutorial supervision over the execution of sentences, and ways to resolve them. However, the implementation of the proposals considered in the article will significantly improve the state of legality in this area.

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References

- Antonov, I. O., Verin, A. Y., Klyukova, M. E., & Nechaeva, E. V. (2019). Improvement of Institution of Parole Release and Its Implementation Practices. *Journal of Educational and Social Research*, 9(4), 205.
- Barkow, R. E. (2009). Organizational Guidelines for the Prosecutor's Office. *Cardozo L. Rev.*, 31, 2089.
- Becker, G. S., & Stigler, G. J. (1974). Law enforcement, malfeasance, and compensation of enforcers. *The Journal of Legal Studies*, 3(1), 1–18.
- Borovyk, A. (2018). The State Of Researching In Science The Problems Concerning Motives Of Committing Corruptible And Other Criminal Offences In The Sphere Of Punishment Execution Of Ukraine. *KELM (Knowledge, Education, Law, and Management)*, 24(4), 43–56.
- Bury, V. E. (2015). Scientific and Methodical Recommendations About Criminological Forecasting of Convicts'behaviour, Conditionally Released from Places of Imprisonment. *Редакционный Совет*, 27.
- Carlson, P. M., & Garrett, J. S. (1999). *Prison and jail administration: Practice and theory*. Jones & Bartlett Learning.
- Dobryakov, D. A. (2020). The Legal Status of a Lawyer in The Russian Federation and The Republic of Korea: Comparative-Legal Analysis. *RUDN Journal of Law*, 24(2), 353–388.
- Doherty, M. (2000). *Criminal justice and penology*. Old Bailey.
- Green, B. A., & Roiphe, R. (2017). Rethinking Prosecutors' Conflicts of Interest. *BCL Rev.*, 58, 463.
- Kozachenko, I. J., & Sergeev, D. N. (2013). Postpenitential Control and Repeating Crime Prevention. *Russian Journal of Criminology*, 2, 74–80.
- Kozybaeva, G. B., Piddubnyi, O. Y., Balykin, I. I., Balykina-Halanets, L. I., & Shatkovskiy, Y. N. (2019). Comparative Legal Analysis of Educational Measures for Minors Who Have Committed an Administrative Offense in Kazakhstan and Ukraine. *Journal of Advanced Research in Law and Economics*, 10(1 (39)), 274–284.
- Miethe, T. D., & Lu, H. (2005). *Punishment: A comparative historical perspective*. Cambridge University Press.
- Olkhovik, N. V. (2018). The Effectiveness of Criminal Punishment Without A Deprivation Of Liberty. *Russian Journal of Criminology*, 12(1), 51–59.
- Paneyakh, E. (2014). Faking performance together: Systems of performance evaluation in Russian enforcement agencies and production of bias and privilege. *Post-Soviet Affairs*, 30(2–3), 115–136.
- Plieva, A. S. (2013). Features of the prosecutor's supervision over the execution of the laws on federal security, international relations and combating extremism. *Вопросы Российской и Международного Права*, 7–8, 62–79.
- Safronov, V. V., Babaeva, A. A., Farafontova, E. L., Petrova, G. I., & Schebliakov, E. S. (2019). The substance and content of environmental supervisory activities in the Russian Federation. *IOP Conference Series: Earth and Environmental Science*, 315(2), 022020.
- Shcherbakov, A. V., Shabanov, V. B., Budanova, L. Y., Alexandrova, O. P., & Demidov, O. G. (2019). The Problems of the Replacement of Alternative Penalties Taking into Account the Implementation of International Standards: Case of Some Post-Soviet Countries. *KnE Social Sciences*, 37–50.
- Strossen, N. (1989). Recent US and international judicial protection of individual rights: A comparative legal process analysis and proposed synthesis. *Hastings LJ*, 41, 805.
- Tabolina, K., & Tabolin, V. (2020). Prosecutor's Supervision in Criminal Proceedings in the Context of the Leading Development of Digital Relations. *6th International Conference on Social, Economic, and Academic Leadership (ICSEAL-6-2019)*, 376–381.
- Teplyashin, P. (2010). Limitation of freedom as a criminal punishment: Issues of legislative regulation and effectiveness in special crime prevention. *Russian Journal of Criminology*, 4, 51–57.