

Penitentiary liability for environmental crimes

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Abstract: Speaking about the social importance of preventing crimes in the field of the environment, it is worth noting the danger of consequences caused by these acts. The planned course of the policy of humanization of criminal law has an ambiguous effect on the reduction of environmental crimes. As a result, in places of deprivation of liberty there are persons convicted (including for environmental crimes) in respect of which cases of acquiring the status of a persistent violator of the sentence serving regime are not excluded. The article discusses the problems of changing the legal status of those convicted of environmental crimes. A structural, retrospective and comparative legal analysis of the concept of «malicious violator» in the legislation is carried out. The study analyzes the points of view of scientists who determine the legal personality of a convicted person for environmental crimes. On their basis, the goals and objectives are synthesized to establish the doctrinal positions of the legal personality of malicious violators of the penitentiary regime, their features and specific features are given. In particular, the issues of the emergence of their legal capacity, capacity to act and «delictual capacity» are disclosed. Summarizing the discussion conducted in the study, the authors cite their own concept of a malicious penitentiary violator, highlighting the special legal status of a convicted person for crimes in the field of ecology.

1 Introduction

The existing gaps in the definition of the status of a persistent violator do not contribute to the clarity and certainty in the regulation of its special situation in places of deprivation of liberty. Taking into account the understatement in terms of the definition of the investigated special type of convict, let us turn to the general and special features that characterize a convict serving a sentence of imprisonment.

It should be noted that for the first time the term "malicious penitentiary violator" (hereinafter referred to as "malicious violator") could be found in the corrective labor codes of the USSR of the 20th century. It should be admitted that today in the Executive Penal Code of the Russian Federation there is no definition disclosing the special status of a person sentenced to imprisonment who has committed a malicious misconduct while serving his sentence, which, of course, does not contribute to clarity and certainty regarding

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the legal regulation of its legal status. Nevertheless, in some normative acts of a criminal-executive nature and in acts of judicial interpretation of the Supreme Court of the Russian Federation, the term under discussion is mentioned and used. A malicious violator of the regime as a term is often used in acts of amnesty. This category is used in acts of judicial interpretation. In particular, one can draw attention to the resolution of the Plenum of the Supreme Court of the Russian Federation of May 16, 2017, No. 15, which explains the rules for the implementation of administrative supervision over released persons from places of detention. For the sake of fairness, we note that in these official documents there is a mention of the term of a malicious violator as a basis for changing the legal status of a convicted person [1-15].

The purpose of the study is to establish scientific positions in the field of the legal personality of convicts who have been recognized as persistent violators of the regime by a decree of the head of the correctional institution. This can be achieved by solving the following tasks:

- determining the status of a malicious violator of the sentence serving regime, as well as identifying its specific features;
- determining the essence and scope of legal capacity, capacity to act, delictual capacity of a convicted person who has the status of a malicious penitentiary offender;
- establishing the concept of a malicious penitentiary offender and designating him as a special subject of criminal-executive legal relations.

2 Literature review and research methodology

The scientific literature does not pay enough attention to persons convicted of crimes that infringe on environmental safety. In particular, the characteristics of persons convicted of environmental crimes were addressed by A.V. Datus, E.G. Bagreeva, R.M. Voronin [3, p. 78]. A significant number of works on the status of a convicted person as a subject of criminal-executive law have been investigated by Yu.A. Golovastova [2]. The issues of applying disciplinary sanctions against convicted persons are covered in the works of P.E. Koneger [4, p. 57], G.V. Kurbatova [5, p. 10], A.M. Melikyan [7, p. 22], A.P. Isachenko, A.M. Fumm [11, p. 13]. A.E. Natashev singled out the convicted person as a subject of disciplinary responsibility in places of deprivation of liberty [10, p. 15]. The issues of imposition in relation to convicted administrative offenses were partially discussed in works of A.Ye. Lunev [6, p. 39]. The relationship between the concepts of a malicious violator and a negatively characterized convict was discussed by A.S. Mikhlin, A.A. Novikov and other scholars-penitentiaries, who expressed the idea of their hierarchy [8, p. 67]. Investigating this topic, M.B. Metelkin, P.R. Fedoreev spoke about the identity of these concepts [12, p. 30-32].

During the research, various general scientific and private scientific methods of cognition were used.

At the initial stage of the study, when assessing the category of a malicious violator in places of confinement, the method of analyzing scientific opinions of scientists-penitentiaries about the legal personality of convicts is used, on the basis of which the authors form their vision of the legal status of a malicious violator.

At the second stage, in terms of individualization and differentiation of the legal position of a malicious penitentiary offender as a subject of law, the comparative legal method is applied, in terms of the legal personality of the considered category of convicts. On the basis of the method of synthesis, analogy and formal logic, the essence and scope of legal capacity, capacity to act and delictual capacity of a malicious penitentiary offender in criminal-executive legal relations are revealed.

At the final stage of the study, using the deductive method, the special status of the malicious violator is revealed. Applying the method of generalization, the authors formulated the definition of a malicious violator of the sentence serving regime.

3 Results

The study showed that a persistent violator must be understood as a convict serving imprisonment, having the status of a subject of penitentiary responsibility, as well as being a special subject of criminal executive law, corresponding to the following features: 1) encroached on an object of penitentiary protection; 2) committed a single socially harmful, illegal act prohibited by the Executive Penal Code of the Russian Federation; 3) who committed a repeated violation, provided for by part two of Article 116 of the Criminal Code of the Russian Federation; having a special criminal-executive legal personality, in respect of whom a decision of the head of the correctional institution was issued, on the application of penalties to him – placement in a punishment (disciplinary) isolation ward, transfer to a cell-type room, a single cell-type room, a solitary confinement cell, or transfer to institutions , previously determined by the court, or correctional institutions with a more strict regime, including a prison.

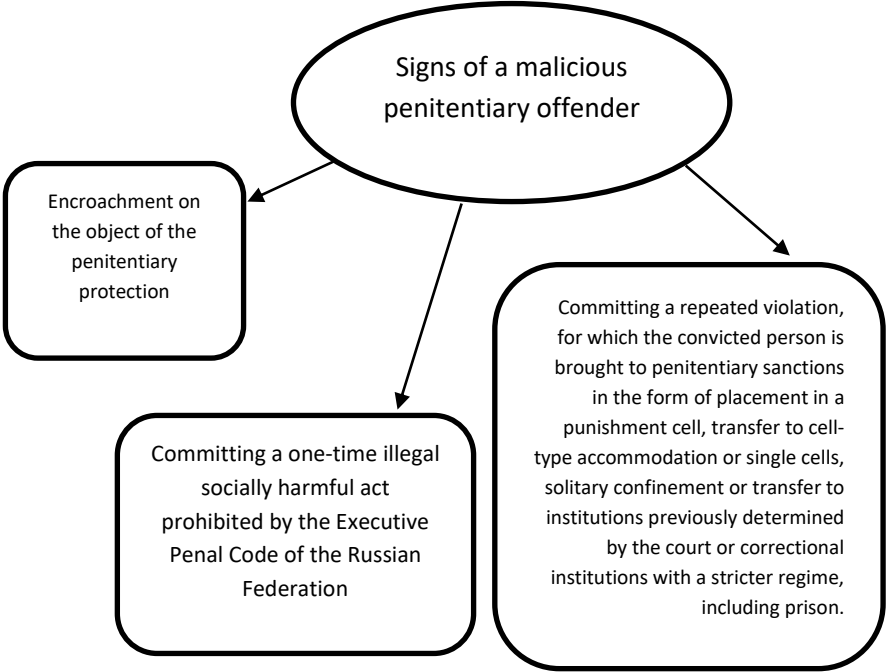


Fig. 1. Signs of a malicious violator in places of deprivation of liberty

4 Discussion

According to the statistics of the Ministry of Internal Affairs of the Russian Federation, at the beginning of 2021, 2.2 thousand environmental crimes were committed. There has been a 16% relative decrease in recorded crimes that infringe on environmental protection compared to the same period last year. [1, p. 4] The commission of such acts by persons presupposes their inevitable appearance in places of deprivation of liberty as convicts. In

particular, when analyzing the scientific literature, it was found that on average 6.5% of such convicts are characterized negatively, of which 0.2% are recognized as malicious violators of the sentence serving regime [3, p. 78].

Convicts who have committed environmental crimes can be divided into two groups. The first group consists of persons whose illegal actions fall under the description of such crimes as: illegal hunting, illegal felling of trees and bushes, illegal extraction of animals and plants. They can be both Russian and foreign citizens. The second group is made up of persons convicted of crimes in the field of environmental management, who have the status of an official. As a rule, they head enterprises, strive exclusively for profit and personal gain, as a result, they refuse to equip production sites with new innovative technologies, thereby harming the environment. Thus, the general criminological portrait of such convicts boils down to the fact that they have a low level of ecological culture and education, as well as a low technological culture.

Considering the category of a malicious violator as a whole, it should be noted that there is no clear definition of its status in the scientific literature. In our opinion, a malicious violator is a special type of person sentenced to imprisonment, possessing the property of legal personality. Yu. A. Golovastova, examining the convict as a subject of criminal executive law, identifies the traditional classical features that characterize it [2, p. 26]. A malicious violator as a special subject of criminal executive law also has individual specific features. They consist in a number of restrictions concerning all spheres of life of a person sentenced to imprisonment, and are expressed by:

- 1) reduction of freedom – the transfer of a convicted person recognized as a malicious violator to more stringent conditions in view of the application of penal sanctions to him;
- 2) reducing interaction with the outside world – limiting or prohibiting telephone conversations, dating, receiving parcels.

It should be noted that the essence and scope of the legal capacity of a special subject depends on the sex, age and severity of the committed act by the malicious violator. So, the legal capacity of a convicted person appears from the moment the court's conviction comes into legal force [2, 28-29 pp.]. The legal capacity of a malicious violator, in our opinion, is associated with the fact that the law enforcement officer issued a resolution recognizing the convicted person as a malicious violator. From that moment on, he acquires new qualities, in fact, becoming a special subject of criminal executive law.

The content and scope of the legal capacity of the investigated special subject vary depending on the sex, age and severity of the committed act by the malicious violator. A minor offender is subject only to placement in a disciplinary cell for up to seven days. For women recognized as persistent violators of the sentence serving regime, the term for the application of a penalty in the form of transfer to a cell-type room has been reduced to three months, a single cell-type room and a solitary confinement are not provided for by the law. In addition, it provides for the exclusive presence of persistent offenders in correctional institutions of the general regime. A stricter regime of correctional institutions is not provided by law.

A malicious violator has not only legal capacity, but also capacity to act. It is customary to understand it as a person's ability to embody rights and fulfill legal obligations. Considering that a malicious violator is a special subject of criminal-executive law and is derived from a convicted person, it should be said that capacity to act appears simultaneously with legal capacity.

The possibility of a convicted person possessing delictual capacity as a malicious violator of the regime depends on a number of circumstances that are interconnected with the institution of «sanity». Nevertheless, if it is established that a convicted person who, after committing an unlawful act provided for in part one of Article 116 of the Executive Penal Code of the Russian Federation and is serving a sentence in places of deprivation of

liberty, has a mental disorder that deprives him of the opportunity to realize the actual nature and social danger of his actions (inaction) or lead them, then it should be borne in mind that, firstly, he will not be recognized as a malicious violator, and secondly, the issue of releasing him from further serving his sentence in accordance with Art. 81 of the Criminal Code of the Russian Federation. In particular, in this case, the convicted person who is in places of deprivation of liberty and who has committed an unlawful act in a state of insanity is recognized as an unfit subject, and, therefore, does not acquire the status of a malicious violator. In this case, the issue of applying compulsory medical measures to him is resolved.

The presence in Articles 78 and 115 of of the Executive Penal Code of the Russian Federation of measures that toughen the conditions for serving a sentence exclusively in relation to persistent violators, both through the application of disciplinary sanctions and transfer to another correctional institution with a more stringent regime, indicates that they have delictual capacity. In the theory of law, it means the ability of a person to bear responsibility for committing offenses. As a matter of fact, the investigated subject is considered liable from the moment of imposition of a penalty. Another thing, sometimes, in fact, he is deprived of the opportunity to bear additional responsibility. This is due to a number of factors. Among the objective ones, one can single out such as the period of application of disciplinary action, as well as the time of execution of the disciplinary action. In accordance with Article 117 of the Executive Penal Code of the Russian Federation, this period of time reaches up to four months. Subjective factors mean the actual state of the participants in the process of recognizing the convicted person as a malicious violator, as well as the existence of material conditions for the implementation of disciplinary sanctions. We are talking about the time for preparation of the necessary documentation by the administration officials in relation to him, or the state of health of the convict, to which a delay in the execution of penitentiary measures can be applied.

We consider the most reliable position according to which the delictual capacity of a malicious violator arises from the moment of the issuance of the decision of the head of the prison on his recognition as such. Here, in our opinion, the grounds that prevent the emergence of the delictual capacity are his insanity, as well as the commission of a malicious offense under the influence of physical or mental coercion. In our opinion, the first circumstance reflects the subjective properties of the act, while the second participates in the objective characterization of the malfeasance.

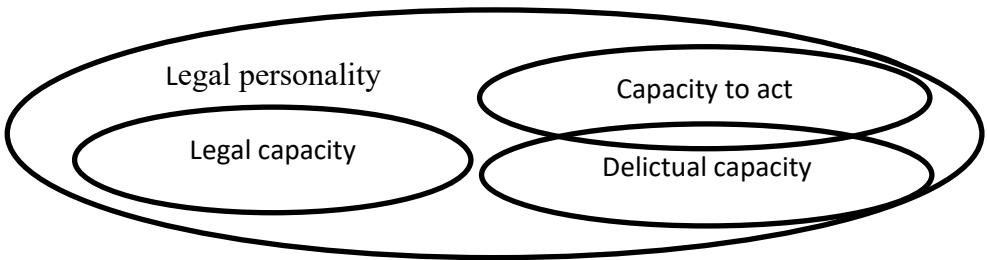


Fig. 2. Legal personality of malicious penitentiary offenders

In addition to the general features inherent in each convict, a malicious violator has specific features that determine his special status. So, using the principle from the general to the particular, let us clarify the signs that characterize the status of the subject under study. In general, we are talking about a person sentenced to imprisonment who grossly or

systematically violates the established procedure for serving a sentence in a particular correctional institution. We refer to them:

1) those who once committed illegal acts prohibited by the first part of Article 116 of the Executive Penal Code of the Russian Federation;

2) those who have repeatedly committed penitentiary acts, that is, in whose actions there is a sign of systematicity;

3) persons in respect of whom a resolution of the head of the correctional institution has been issued on recognizing them as malicious violators;

4) those to whom penal measures were applied in the form of directing them to cell-type premises, as well as single cell-type premises, and a solitary cell;

5) persons subject to transfer to strict conditions of serving the sentence;

6) persons transferred from a settlement colony to a general regime correctional colony;

7) persons subject to transfer from correctional colonies of general, strict and special regimes to prison for a term of up to three years.

The legal grounds that prevent the convict from being recognized as a malicious violator are recognized as the state of insanity of the convicted person who has committed an unlawful act, provided for in part one of Article 116 of the Executive Penal Code of the Russian Federation, and circumstances excluding the maliciousness of the illegal act - physical and mental coercion. As we can see, one of the grounds characterizes the subjective component, since it refers to the subject of serving the sentence - the convict. Another reason refers to the objective description of the very unlawful act committed in places of deprivation of liberty, when the convicted person was under the influence of physical or mental coercion.

The convicted person acquires the legal quality of a special subject - a malicious violator from the moment of issuing a resolution signed by the head of the correctional institution on bringing him to penitentiary (disciplinary) responsibility for committing a malicious misconduct. From this moment, when a person sentenced to imprisonment, having the characteristics of a subject of criminal executive law, acquires an additional species status of a malicious violator, thus becoming a special subject of criminal executive law. A qualitative change in the status of a convict and his acquisition of the special status of a malicious violator indicates a change in the legal personality of the convict.

It should be noted that the heads of departments of the institution are members of the commission for recognizing a convicted person as a malicious violator. The commission is headed by the head of the correctional institution. In this case, the procedure for recognizing a convicted person as a malicious violator of a correctional institution is inherent exclusively in the sphere of criminal-executive law.

The status of the investigated special subject presupposes a specific position of the convict based on his illegal behavioral characteristics, which create facts of violation of the sentence serving regime. Malicious manifestations of such acts serve as grounds for changing the conditions of serving the convict's imprisonment. They do not depend on gender, age, nationality and citizenship of the subject of criminal executive law, which cannot be said about the disciplinary sanctions applied to them.

Let us ask ourselves a question: what additional signs characterize a malicious penitentiary offender that distinguishes him from other types of convicts? In our opinion, these include:

1) the commission of misconduct occurs exclusively in places of deprivation of liberty;

2) a malicious violator can be either a convicted person who has committed a single act prohibited by the Executive Penal Code of the Russian Federation, or who has committed repeated offenses during the year, for which a disciplinary punishment is provided in the form of placement in a punishment cell;

4) a persistent violator may commit misconduct using items prohibited in places of deprivation of liberty;

5) the acts for which the convicted person can be recognized as a malicious violator are malicious only in the conditions of places of deprivation of liberty.

The status of a special subject - a malicious violator arises for a convicted person upon issuing a decree, signed by the head of a correctional institution, on bringing him to penitentiary responsibility for committing a malicious violation. The convicted person's possession of additional signs of a malicious violator gives rise to a change in his legal status, he becomes at the same time a special subject of criminal-executive law.

5 Conclusion

Determination of the completeness of the rights and obligations of a person sentenced to imprisonment has a positive effect on the observance of the principles of criminal executive law in the execution of criminal sentences. His special legal position as a persistent violator of the sentence serving regime presupposes limited legal personality. This circumstance may serve as a basis for abuse by the administration staff in the application of penitentiary punishment measures that violate the processes of correction of convicts in general. The research presented by the authors reveals the specific features of a convict serving imprisonment for environmental crimes as a subject of protective procedural criminal-executive legal relations. The highlighted signs will make it possible to identify malicious misconduct from other forms of manifestation of unlawful behavior.

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