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Compensation for Poor Conditions of Detention in Penitentiary Institutions of the Russian Federation: Problems of Legislation and Practice

SERGEI A. STAROSTIN
Kutafin Moscow State Law University (MSAL), Moscow, Russia
Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia, Vologda, Russia
SASTAROSTIN@msal.ru, https://orcid.org/0000-0002-0108-7916

PAVEL V. GOLODOV
Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia, Vologda, Russia, pl-family@yandex.ru, https://orcid.org/0000-0002-2747-9723

Abstract

Introduction: the article discusses certain issues of the content and implementation of legislation establishing compensation for poor conditions of detention in penitentiary institutions of the Russian Federation, reveals socio-legal significance and features of the intersectoral legal institution under consideration. *Purpose*: based on the analysis of legislative regulation and the practice of awarding compensation for poor conditions of detention, to identify existing legal problems in this area and propose measures to solve them. *Methods*: formal-logical, system-structural and comparative-legal methods. *Results*: we have identified a number of problems in the area under study (administrative and penal legislation do not require a preliminary pre-trial appeal of the violation of detention conditions; there are no clear criteria for distinguishing violations of detention conditions and other violations, significant and minor violations, criteria for determining the amount of monetary compensation; legislation does not define the specifics of ensuring detention conditions for the suspected and accused during their transportation in special vehicles and special wagons; it is difficult to collect and secure evidence to refute violations that had occurred long before the claim was filed in court; there is no uniform judicial practice regarding the application of the statute of limitations; the convicted, suspected and accused abuse their right to appeal to the court). A number of proposals are formulated (to ensure strict and objective application of legal norms on the limitation period; to legislate types of detention conditions violations, the procedure for determining the compensation amount, and the requirement of a preliminary pre-trial appeal against officials' actions (inaction) resulting in the violation of detention conditions; to provide for the possibility of filing an independent administrative claim only for compensation). *Conclusion*: the legal institution for the compensation for the violation of detention conditions is legally regulated, but there are problems to be addressed; monitoring of detected violations and carrying out appropriate preventive work will contribute to improving the effectiveness of its implementation.

Keywords: penal system; pre-trial detention center; correctional institution; detention conditions; administrative proceedings; recovery of compensation.

5.1.2. Public law (state law) sciences.

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Introduction

State protection of the dignity of an individual is enshrined in the Constitution of the Russian Federation. Nothing can be a reason for belittling the dignity of a person. However, in modern realities, there are still violations of this constitutional requirement. Activities related to the implementation of criminal liability and the use of measures of criminal procedural coercion are no exception. Violation of detention conditions of the suspected, accused, and convicted is of particular importance. They have a direct impact on the state of law and order in the penitentiary sphere, on ensuring the rights and freedoms of persons who have been subjected to criminal prosecution, and seriously harms the authority of the state and the penal system.

The most common violations of detention conditions are overcrowding and unsatisfactory sanitary conditions in correctional institutions and pre-trial detention facilities, poor plumbing, the presence of healthy and sick people, smokers and non-smokers in one residential building, difficulties with treatment and drug provision, insufficient food quality, non-delivery of personal belongings, violation of the right to personal safety and a number of others. At the same time, it should be borne in mind that the concept and an exhaustive systematic list of detention conditions are not disclosed in the legislation. The Supreme Court of the Russian Federation considers these conditions in a broad sense, taking them beyond the regulation of exclusively penal legislation (for example, the right to legal aid, access to justice, etc.) [1]. Moreover, granting of illegal privileges and benefits to individuals may also indicate the violation of the above conditions.

In recent years, a number of measures have been taken at the state level to bring prison conditions closer to international standards and prevent their violation. Along with reducing the number of "prison population", increasing financing of the penitentiary system, and developing institutions of state and public control, such measures include creation at the national level of an effective mechanism for judicial and legal protection against violations related to the lack of adequate detention conditions. This mechanism introduced by the Federal Law No. 494-FZ of December 27, 2019 "On Amendments to Certain Legislative Acts of the Russian Federation" (hereinafter referred to as Law No. 494-FZ) provides for the right of persons in correctional institutions to receive compensation for violations of detention conditions at the expense of the federal budget on the basis of a court decision in the administrative proceedings [2].

General characteristics of the institution of compensation for violations of detention conditions in pre-trial detention and correctional facilities

The institution of compensation for the violation of detention conditions is fixed in articles 17 and 17.1 of the Federal Law No. 103-FZ of July 15, 1995 "On the Detention of the Suspected and Accused of Committing Crimes", Article 12.1 of the Penal Code of the Russian Federation No. 1-FZ of January 8, 1997 and Article 227.1 of the Administrative Court Procedure Code of the Russian Federation No. 21-FZ of July 8, 2015. These norms established the right of suspects, accused and convicted persons to receive compensation, as well as the specifics of filing and considering claims for compensation. In accordance with the provisions of the Code of Administrative Judicial Procedure of the Russian Federation, an administrative claim is filed no later than 3 months from the date of the violation. An administrative statement of claim may be filed by both an administrative plaintiff or his/her representative, independently determining the jurisdiction of the case (Part 4 of Article 24 of the Code of Administrative Judicial Procedure of the Russian Federa-

tion). Administrative defendants are different subjects, the main of which is the Federal Penitentiary Service of Russia as the main administrator of the federal budget. Compensation is awarded based on actual circumstances of the violations committed, their duration and consequences.

Specifics of dealing with the demands of suspected, accused and convicted persons for compensation for inadequate detention conditions in correctional institutions

When dealing with claims for compensation for improper detention conditions in correctional institutions, the possibility of abuse by the suspected, accused and convicted persons of their right to file an administrative claim should be taken into account. Such actions are motivated by the desire and opportunity to receive monetary compensation for actions that employees of the Federal Penitentiary Service of Russia are unable to refute due to the impossibility of proof and which actually have not happened [3]. Therefore, convicts find grounds for filing an administrative claim, often pointing to those violations of detention conditions that are difficult to refute (unpleasant odor in the sleeping quarters, poor water quality, increased noise levels, etc.) [4], or complaining about current (insignificant) inconsistencies in the conditions of detention, the prompt elimination of which is not possible in the type of existence of regulated procedures for this (for example, the procedure for concluding a government contract). To a certain extent, this is due to the lack of liability measures for abuse of law when filing an administrative claim.

Administrative plaintiffs often skip or deliberately delay the deadline for applying to court. However, the courts reinstate the statute of limitations, considering administrative defendants' arguments to be untenable. After several years from the moment of the violation, it is not always possible for the defendant to provide the necessary evidence [5]. At the same time, the untimely submission of a complain for restoration of violated rights and compensation is not always associated with difficulties in collecting relevant evidence confirming the violation of detention conditions, but with the desire to receive compensation after release.

The abuse of the right to receive compensation for improper detention conditions may also be evidenced by the repeat submission of an administrative claim by the convicted person, as well as the absence of prior complaints from the convicted person, which indirectly indicates that the administrative plaintiff has no goal to eliminate the violation of his rights (the goal is to receive monetary compensation).

The study of judicial practice demonstrates that a lack of sufficient funds to eliminate violations of detention conditions, design features of buildings and structures of correctional institutions, and reconstruction of buildings are not accepted by the court as sufficient evidence indicating the presence of emergency or unforeseen circumstances. At the same time, the court takes into account these objective factors, but in conjunction with the measures taken to eliminate violations.

In judicial practice, there are situations when the court proceeded not only from the fact of a specific violation of detention conditions, but also considered it taking into account the totality of other concomitant circumstances that aggravate the plaintiff's situation. For example, placing a non-smoker in a cell with smokers will be considered by the courts as a violation of detention conditions if the plaintiff has a respiratory disease. Here it is necessary to take into account the possibility of direct application of the legal principle of humanism in the sphere of legal relations arising from the placement of the suspected, accused and convicted persons in places of forced detention [6; 7]. When making a decision based on results of the consideration of an administrative claim by the court, concomitant circumstances such as non-compliance with the norm of the sanitary area of cells, the time of year, climate features at the location of the correctional institution, etc. may be taken into account.

A problematic point, in our opinion, is the lack of legislative consolidation of criteria and legal consequences of recognizing violations of detention conditions in a penal institution as insignificant. For example, complaints are received about an unpleasant smell in the sleeping quarters, an increased noise level, a dog barking outside the window, or even smoke coming from the chimney of a bathhouse building [4]. At the same time, even if there is an actual presence and confirmation of the violation of detention conditions (for example, the

prosecutor's office's submission on the elimination of violations of penal legislation), the court takes into account a lack of evidence that these violations have entailed significant negative consequences for the convicted person (the suspected or the accused). The decision of the Kirov-Chepetsky District Court of the Kirov Oblast No. 2A-1095/2020 of July 20, 2020 states that the mere fact of detention in conditions that do not correspond to proper detention conditions without establishing specific facts that indicate any negative consequences of such detention for the plaintiff, cannot be grounds for bringing the defendants to justice.

The courts, concluding that the violation of the rights of the convicted person is not proven, often refer to the fact that the convicted person did not complain about the violation of detention conditions during the period of serving a sentence [8; 9]. The absence of such complaints, on the one hand, indicates the insignificance of the violation for the convicted person, on the other hand, it does not allow the administration of the institution to identify and eliminate violations in a timely manner, as well as document them.

Administrations of penitentiary institutions are gradually developing an integrated approach to the formation of the evidence base [4]. A set of such evidence is specific to each specific situation (violations of detention conditions) and therefore should be formed taking into account its specifics. The collection of evidence is aimed at refuting arguments of the administrative plaintiff in relation to the fact of the violation itself, as well as its volume, duration, level of negative impact and consequences. The presence of force majeure circumstances and objectively existing related factors (insufficient financing, repairs, etc.), as well as the characteristics and specifics of convicts' behavior (damage to property, smoking in unauthorized places, state of health, registration, etc.) are taken into account. Most often, the courts make decisions on awarding compensation for improper conditions detention based on the existence and content of acts of prosecutorial inspections available in the case file or proactively requested by the court in the prosecutor's office. In accordance with Article 61 of the Code of Administrative Judicial Procedure of the Russian Federation, the circumstances of an administrative case, which according to the law must be confirmed by certain means of proof, cannot be supported by any other evidence (for example, the disputed fact of improper provision of medical care to a convicted person may be refuted by the results of a forensic medical examination, rather than by the testimony of a correctional institution's medical officer and medical documents drawn up by him/her).

In accordance with Part 1 of Article 62 of the Code of Administrative Judicial Procedure of the Russian Federation, persons participating in the case are required to prove the circumstances to which they refer as grounds for their claims or objections. Paragraph 13 of the resolution No. 47 of the Plenum of the Supreme Court of the Russian Federation of December 25, 2018 states that, by virtue of parts 2 and 3 of Article 62 of the Code of Administrative Judicial Procedure of the Russian Federation, the obligation to prove compliance with appropriate conditions of detention of persons deprived of liberty rests with the administrative defendant (a relevant body, an official). At the same time, the administrative plaintiff must submit (inform) the court in the administrative statement of claim, as well as during the consideration of the case, information about which rights, freedoms and legitimate interests are violated, bring arguments substantiating the stated claims, attach available relevant documents (in particular, descriptions of detention conditions, medical reports, appeals to public authorities and institutions, responses to such appeals, documents containing information about persons who have carried out public control, as well as about persons deprived of liberty who may be questioned as witnesses, if any) (*appeal ruling of the Vologda Regional Court No. 33a-2124/2022 of May 31, 2022 (case No. 2a-815/2022)).* The testimony of the administrative plaintiff alone is not enough to establish the fact of the violation of detention conditions; he/she must specify facts indicated by him/her in the administrative statement of claim: when exactly these violations occurred, whether he reported them to the staff of the institution, if so, to whom, how his/her messages were recorded, whether any measures afterwards (*decision of the Kirov-Chepetsky District Court of the Kirov Oblast No. 2A-1095/2020 of July 20, 2020)*. Therefore, the

administrative plaintiff must provably confirm the fact of violation of detention conditions.

In accordance with Paragraph 1 of Part 3 of Article 227 of the Code of Administrative Judicial Procedure of the Russian Federation, in case of satisfaction of an administrative claim, the courts indicate the need for the administrative defendant to eliminate violations of the rights, freedoms and legitimate interests of the administrative plaintiff [10]. At the same time, in practice, the courts often limit themselves to recognizing illegal actions (omissions) of administrative defendants, as well as awarding compensation, which entails further non-compliance of detention conditions with the requirements established by law and, as a result, further violation of the rights, freedoms and legitimate interests of administrative plaintiffs [11]. In this regard, preventive work aimed at identifying and eliminating the causes of violations, developing a system of interaction with other law enforcement agencies, as well as improving the system for recording and documenting detention conditions in correctional institutions are becoming particularly relevant.

Topical problems and proposals for improving legislation

In the practice of correctional institutions and pre-trial detention facilities, there are many problems associated with the application of norms governing the award of compensation for violations of detention conditions in a correctional facility in accordance with Article 227.1 of the Code of Administrative Judicial Procedure of the Russian Federation. So, there is no requirement in administrative and penal legislation for a preliminary pre-trial appeal against violations of detention conditions; there are no clear criteria for distinguishing between violations of detention conditions and other violations, significant and minor violations, criteria for determining the amount of monetary compensation; the specifics of ensuring detention conditions of the suspected and accused persons during their transportation in special vehicles and special wagons are not defined by law (subordinate regulatory legal acts are mainly used); it is difficult to collect and ensure the safety of evidence to refute the facts of violations occurred long before the claim is filed in court; there is no uniform judicial practice regarding the application of the statute of limitations provided for in Article 219 of the Code of Administrative Judicial Procedure of the Russian Federation; the convicted, suspected and accused abuse their right to appeal to the court, etc.

One of the most common procedural problems is the actual leveling of Article 219 of the Code of Administrative Judicial Procedure of the Russian Federation, which stipulates a three-month period for filing an administrative claim in accordance with Article 227.1 of the Code of Administrative Judicial Procedure of the Russian Federation, since courts do not consider the omission of the statute of limitations as an independent basis for refusing to satisfy the claim and often restore these missed deadlines [12]. Such a possibility is provided by Paragraph 12 of the resolution of the Plenum of the Supreme Court of the Russian Federation No. 47 of December 25, 2018, recognizing the continuing nature of violations of detention conditions in places of deprivation of liberty and the right of the administrative plaintiff to appeal to the court during the entire period of stay in the penitentiary institution, as well as within three months after departure from the institution. This legal problem puts the administrative defendant at a disadvantage in the process of collecting evidence and proving in situations where a significant period of time has passed since the alleged violation of detention conditions; documents and other evidence of the actual state of conditions of detention may have already been lost by the time the administrative dispute is considered (the retention period for documents has expired, potential witness employees have resigned, etc.).

In this regard, we believe that ensuring unconditional application of the time limit for filing a claim could exclude abuse of the right to appeal to the court by the convicted, suspected and accused persons, especially if the moment of the end of the violation is obvious (for example, in the case of transfer of a person from a correctional institution (pre-trial detention center), where the violation has occurred, to another institution or from one unit (department, area) to another). At the same time, there is a position according to which the rules for calculating limitation periods for the protection of personal non-property rights provided for in Paragraph 2 of Article 208 of the Civil Code of the Russian Federation apply to material legal

relations related to the violation of detention conditions that took place before the entry into force of the law No. 494-FZ. Limitation periods do not apply regardless of whether the law 494-FZ had entered into force by the time the relevant statement of claim was filed (for example, the Cassation Ruling of the Judicial Board on Administrative Cases of the Third Cassation Court of General Jurisdiction of June 3, 2024 in case No. 8a-9434/2024) [13].

An analysis of judicial practice on the consideration of cases on the establishment of compensation for the violations of detention condition in correctional institutions demonstrates that the amounts of monetary compensation actually awarded in favor of administrative plaintiffs vary significantly from region to region, even for violations similar in content and duration. This state of affairs is due to the presence of specific regional judicial practice in the absence of legally established criteria and procedures for determining the amount of compensation. In this regard, we consider it possible to legislate the establishment of maximum or even fixed amounts of compensation, depending on the type of violation committed. A detailed categorization of violations of detention conditions in correctional institutions and pre-trial detention facilities is not an easy task due to the multiplicity of legal sources in this area, as well as significant differences in the same composition of violations depending on their duration, circumstances in which they were committed, and consequences. Nevertheless, systematization of the list of detention conditions, violation of which entails the right of a convicted person to apply to court with a claim for compensation, seems appropriate (for example, within the framework of Article 12.1. of the Criminal Code of the Russian Federation and Article 17.1. of the Federal Law No. 103-FZ of July 15, 1995 “On the Detention of the Suspected and Accused of Committing Crimes”).

The most significant violations, the (fixed) amount of compensation for which should be set at the maximum level, should include the right to health protection (medical treatment and drug provision), the right to provide rehabilitation facilities for the disabled, the right to obtaining qualified legal assistance, the right to personal security (including protection from ill-treatment (torture) and diminution of human dignity), the right to visits with relatives, religious rights and the right to access justice; as well as those related to violations of the conditions of material and domestic support for convicted pregnant women, convicted nursing mothers and convicted women with children. For other violations, it is advisable to set the maximum (fixed) amount of compensation in a smaller amount, while providing for the unconditional obligation of the court to award compensation in case of finding a violation.

Currently, the absence of preliminary written complaints and statements on the part of the administrative plaintiff addressed to relevant officials of the administration of the correctional institution (pre-trial detention facility), the territorial body or the central office of the Federal Penitentiary Service of Russia, and the prosecutor’s office is not accepted by all courts as grounds for refusing to satisfy the claim for compensation. However, there is another practice, according to which the absence of complaints from the plaintiff about improper detention conditions indicates that the stated circumstances are of low importance (decision No. 2A-1017/2021 of the Sharyinsky District Court of the Kostroma Oblast of February 8, 2022). We believe that the courts should take into account the fact of complaints to the management of the correctional institution about unsatisfactory detention conditions, as this will ensure timely recording of the violation by the authorized body in documents that could later be used as evidence. In this regard, it seems advisable to consolidate, within the framework of Article 227.1 of the Code of Administrative Judicial Procedure of the Russian Federation, the requirement of a preliminary pre-trial appeal against the actions (inaction) of officials of a correctional institution (pre-trial detention facility).

The law does not regulate the issue of the possibility of filing an independent administrative claim for compensation, if, for one reason or another, the plaintiff did not exercise the right to compensation provided for in Article 227.1 of the Code of Administrative Judicial Procedure of the Russian Federation, having previously appealed decisions, actions (inaction) of the administrative defendant [11]. It also seems advisable to make additions to Part 4 of Article 108 of the Criminal Procedure Code of the Russian

Federation, so that the prosecutor involved in the process informs the court about the possibility (impossibility) of detention.

Conclusion

Thus, the legal institution of compensation for the violation of detention conditions in a correctional institution has found its way into legislation, and certain judicial practice has developed regarding its application, including one generalized at the level of the Supreme Court of the Russian Federation. Meanwhile, there is still a number of problematic issues that need to be resolved by amending legislation and forming legal positions of the highest judicial authorities of the Russian Federation that are adequate to the evolving judicial practice. The main ones are related to the use of limitation periods when applying to court, abuse of the right by administrative plaintiffs, the lack of a clear list of types (categories) of detention conditions in correctional institutions, and legal guidelines for calculating the amount of compensation.

In addition, preventive work aimed at identifying and eliminating the causes of violations, developing a system of interaction with other law enforcement agencies, as well as improving the system for recording and documenting detention conditions in correctional institutions are becoming particularly relevant. It is necessary to constantly monitor these issues, eliminate causes and conditions of violations, especially subjective ones, and eliminate their consequences. Institutions and bodies of the Federal Penitentiary Service of Russia should act systematically and consistently, in cooperation with the prosecutor's office, institutions of public control, proceed from the principle of the inadmissibility of human rights violations, and take comprehensive measures to effectively identify and prevent them [6].

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INFORMATION ABOUT THE AUTHORS

SERGEI A. STAROSTIN – Doctor of Sciences (Law), Professor, professor at the Department of Administrative Law and Procedure of the Kutafin Moscow State Law University (MSAL), Moscow, Russia; professor at the Department of Administrative Law Disciplines of the Faculty of Psychology and Law of the Vologda Institute of Law and Economics of the Federal Penitentiary Service of Russia, Vologda, Russia, SASTAROSTIN@msal.ru, https://orcid.org/0000-0002-0108-7916
PAVEL V. GOLODOV – Candidate of Sciences (Law), Associate Professor, Head of the Department of Administrative Law Disciplines of the Law Faculty of the Vologda Institute of Law and Economics of the Federal Penitentiary Service of Rudssia, Vologda, Russia, pl-family@yandex.ru, https://orcid.org/0000-0002-2747-9723

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