

Implementation of the principle of equality through the prism of sectoral law

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Abstract.

The equality of citizens before the law and the courts is the basis of any state governed by the rule of law and ensures the protection of every person from discrimination on various grounds. author analyzes sectoral legislation, comparing understanding of equality. On the basis of the conducted research, the author formulated conclusions. The principles - as the fundamental principles, being the foundation of any branch of law, are of great theoretical interest, and the study of their essence within the framework of criminal law is of significant practical importance, since the principles are subject to mandatory application, both in lawmaking and law enforcement. Moreover, the principles of criminal law are the basis for defining its objectives and goals. Ideally, the criminal law policy of the state as a whole, as well as all individual changes made to the criminal law, should be based on the principles proclaimed by it. Unlike most of the norms of the criminal code of the Russian Federation, which have undergone numerous changes, the principles of criminal law are stable. Since the adoption of the Criminal Code of the Russian Federation, they have never been corrected, which allows us to speak of a clear certainty and stability of the basic concept of criminal law, despite its variability in matters of criminality and the punishability of certain acts and other institutions.

Keywords: constitutional principle, law, taking performance, of criminal punishments, the equality of citizens

1 Introduction

The basic law of Russia proclaimed the equality of citizens before the law, which implies non-discrimination of various categories of people, regardless of their social status and other characteristics. The development of the constitutional principle of the equality of citizens before the law as a “prototype” of the sectoral principles of equality in general is closely related to the development of the named principle of criminal executive legislation.

The study of any legal phenomenon will be incomplete until, along with other aspects, the historical section of the problem under study is revealed. In this regard, it seems necessary to study the legislative consolidation of the principle of equality before the law in the second codified normative legal act of Russia on the execution of criminal punishments.

The study of the principle of equality of convicts before the law in Russian legislation

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should begin from the time of the formation of the Soviet state - from the October events of 1917. The October Socialist Revolution is considered the beginning of a new stage in the development of the Russian state.

The formation of statehood during this period was accompanied by a radical breakdown of the state apparatus that existed before this. This process was also the reason for changes in the penitentiary policy. One of the main tasks facing the authorities at that time was the formation of a fundamentally new penitentiary concept. Its essence consisted in the reorganization, and after - and the complete elimination of the entire "old" prison system.

However, at the time of the collapse of the old penitentiary system, the Soviet state did not have the necessary material, human and scientific resources, and the main ideas of the prison policy of the Russian Empire were included in the normative legal acts. Despite the recognition of equality between citizens by the Soviet state, the 1918 Constitution of the RSFSR stated that in the interests of the working class, individuals were deprived of certain groups of rights that they used to the detriment of the interests of the socialist revolution.

The main task, proclaimed by the fundamental law of the Soviet state, was the establishment of the dictatorship of the working people in order to completely suppress the bourgeoisie. Thus, the transformations being implemented were based on a new fundamental idea that reflected the ideology of communism and political views - the principle of the class approach.

These constitutional provisions were also reflected in sectoral normative legal acts, including those reflecting issues of criminal policy of that time.

2 Materials and Methods

The methodological foundations of the research have been made dialectic scientific knowledge theory and tactics mapping, in a course of research on synthesis methods, analogies, generalization, as well as system, comparative and legal, legalistic, statisticians were applied.

Taking performance into account designs of our legislation normless republic establishing principles, the appropriate to refer to the following is formulated in the theory of law: "The principles of law are not always lying on the surface. However, they are inherent in the law of any country. They are usually fixed directly in legislation (constitutional and customary laws), or derive from maintenance of concrete legal norms".

3 Results

The principle of equality of citizens before the law, enshrined in the Criminal Code of the Russian Federation, is a criminal-legal concretization of the constitutional principle proclaimed by Art. 19 of the Constitution of the Russian Federation, which defined the equality of citizens before the law as equality, that is, the equality of rights and freedoms of all citizens, social opportunities, as well as the equality of their duties and responsibilities, including criminal responsibility. At the same time, the Constitution of the Russian Federation separately enshrined provisions regarding gender equality between men and women.

The criminal law principle of equality is based not only on the provisions of the Constitution of the Russian Federation, but also on the generally recognized norms of international law, although it has its own interpretation. The provisions enshrined in the basic law of Russia concerning the equality of citizens were first proclaimed by the

Universal Declaration of Human Rights, adopted by the UN General Assembly on December 10, 1948. It is difficult to overestimate the importance of the Universal Declaration for the formation of legal norms not only in Russia, but also in the majority of developed countries that have survived the most large-scale and global catastrophe of our time - the Great Patriotic War. However, the essence of the principle of equality of citizens before the law within the framework of criminal law differs significantly from the constitutional one. In fact, it consists in the legislative equality of all citizens to bear criminal responsibility for committing a crime and does not apply to either the imposition of a sentence or to serving it. It is this approach that causes many discussions.

There is even an opinion that there is no need to duplicate the Constitutional principles in the norms of criminal law. This opinion deserves attention, since there is a deformation of constitutional norms in the implementation of their criminal law adaptation.

An example of criminal law "inequality" in the theory of law denotes the peculiarities of criminal liability of minors, the peculiarities of sentencing persons of retirement age, the peculiarities of the appointment and execution of criminal punishment against women, the peculiarities of bringing to criminal responsibility special categories of persons defined by the Criminal Procedure Code, foreign citizens and persons that are immune. Critics trace in these features signs of inequality based on gender, age, citizenship and social status of the offender.

Thus, there is no basis for the internal content of equality, which should not depend on the characteristics of the personality of the offender.

The Criminal Code of the Russian Federation defines the features of the criminal liability of minors. Briefly, these features are expressed in additional measures of a criminal-legal nature, providing for the release of juvenile criminals both from criminal liability and from punishment with the use of educational measures, as well as in a reduced list of types of criminal punishment, reduced sentences, softer conditions for serving sentences and a lot others. We can even talk about the deformation of the main goals of punishment, since the re-education of the guilty juvenile is the main goal of the criminal punishment of minors, in some cases, even to the detriment of restoring social justice.

With regard to minors, as, by the way, and persons who have reached retirement age and the disabled, there is a competition between the criminal law principles of equality and humanism. At the same time, the latter occupies a leading position and plays a dominant role.

Juvenile criminals are the category of persons to which the law treats the most carefully. The economy of criminal repression against minors has real application and maximum expression, which often leads to negative consequences in the form of subsequent criminal behavior. According to research, about half of the criminals in whose actions there is a recidivism of crimes were first criminally prosecuted as a minor. Despite this, the state for many years has been going through the systematic humanization of the criminal responsibility of minors.

4 Discussion

In accordance with Art. 19 of the Constitution of the Russian Federation (hereinafter - the Constitution of the Russian Federation), the state is obliged to guarantee the equality of human and civil rights and freedoms, regardless of gender, race, nationality, language, origin, property and official status, place of residence, attitude to religion, beliefs, membership of public associations as well as other circumstances.

In addition, the Constitution of the Russian Federation directly establishes a ban on any form of restriction of the rights of citizens on the basis of belonging to a particular social group, race, religion or nationality.

It should be noted that the Constitutional Court of the Russian Federation (hereinafter - the Constitutional Court of the Russian Federation) has repeatedly noted that the introduction of certain differences in the rights and freedoms of citizens is not discrimination and is allowed by law.

These provisions indicate the need to form an effective system of state guarantees of the principle of equality of all before the law and the court in order to prevent the restriction of individual rights and freedoms on various discriminatory grounds.

In this regard, public authorities and local self-government bodies are obliged, through the use of a set of legal, political, economic and other methods, to organize such a social environment in which any citizen would have real opportunities to exercise his rights on an equal basis with other persons, as well as to effectively protect them in accordance with the legislation of the Russian Federation.

In other words, the mechanism for ensuring the implementation of the constitutional principle of equality of citizens before the law and the court includes three elements: directly enshrining the relevant rule in the Constitution of the Russian Federation, legislative establishment and regulation of jurisdictional and non-jurisdictional forms of protection of this principle, as well as means of such protection, including measures of responsibility.

Among the guarantees for the implementation of the principle of equality before the law and the court, a separate role is assigned to systems of internal and external control over the activities of state and local authorities, organizations and officials.

The majority of legal scholars question the effectiveness of internal control due to the interest of officials in the outcome of control measures. External control is carried out more fully, since it belongs to the powers of certain sectoral government bodies.

Heads the system of external control over the observance of human and civil rights and freedoms

The President of the Russian Federation, acting as the guarantor of constitutional rights and freedoms, including the right to equality before the law and the court, on the basis of the provisions of the Constitution of the Russian Federation.

On the part of the representative bodies of state power, the obligation to ensure the implementation of the principle of equality before the law and the court is assigned to the deputies of the State Duma of the Federal Assembly of the Russian Federation, whose competence includes consideration of citizens' appeals, carrying out checks on the facts set out in them and sending, based on the results of checks, proposals to eliminate the violations identified ...

The special guarantor of constitutional norms is the human rights ombudsman, whose activities are not subordinate and accountable to state and local authorities, organizations and public associations. It is the condition of independence that guarantees the objectivity and impartiality of the activities of the ombudsman.

5 Conclusion

The prosecution authorities ensure the implementation of the principle of equality before the law and the court in several ways. First, the prosecution authorities exercise supervision over the observance of the current legislation and, accordingly, over the observance of the rights and freedoms of citizens and organizations. Secondly, the prosecutor is an official

authorized to apply to the court in defense of the rights and legitimate interests of other persons, which is also an important guarantee of the implementation of the principle of equality.

Also, one cannot fail to mention the judicial authorities, through which the main protection of the violated rights and freedoms of citizens, including equality, is carried out. In addition, the court is a law enforcement body, the decisions of which reflect the implementation of the principle in question. Additional guarantees for the implementation of the principle of equality creates the binding character of the acts of the Constitutional Court of the Russian Federation throughout the territory of our country and for all subjects of law, since such acts often enshrine the legal positions of the Constitutional Court of the Russian Federation on certain issues, including in the field of ensuring equality before the law and by the court. The Constitutional Court of the Russian Federation in its decisions distinguishes several groups of violations of the principle of equality of citizens before the law and the court, which is of significant importance when similar cases are considered by lower courts.

So, for example, a violation of this principle is seen with excessive uncertainty of a legal norm, which makes it possible for its arbitrary interpretation. Also, violations of the principle under consideration include inconsistency with the constitutional norms of sectoral legislation, the normative establishment of a different approach to certain categories of citizens, and others. Thus, the formation of the legal positions of the Constitutional Court of the Russian Federation allows not only to emphasize the importance and obligation of observing the principle of equality in all spheres of public life, but also to identify and then eliminate the reasons for discrimination under certain circumstances. It is necessary to mention the extrajudicial form of protection of the rights and freedoms of citizens in violation of equality before the law and the court.

Often, such protection is only of an intermediate, additional nature and is mediated by the adoption of a decision by the judicial authorities. In this regard, legal scholars do not pay due attention to this measure of ensuring the implementation of the principle under consideration. Based on the foregoing, we can conclude that there are many ways to ensure the implementation of the principle of equality before the law and the court and to protect the violated rights and freedoms of people in this area. However, the effectiveness of certain methods of provision and protection, as well as their role as guarantees for the implementation of constitutional provisions, is questioned. In this regard, it becomes necessary to comprehensively use all the methods and measures provided for by the current legislation. Only in this case, the Russian Federation will ensure the proper implementation of the constitutional principle of equality by state authorities, local government bodies and officials.

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