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## **THE RIGHT OF JUVENILE CONVICTS TO PERSONAL SAFETY IN PRISONS OF THE FEDERAL PENITENTIARY SERVICE OF RUSSIA: THEORETICAL AND METHODOLOGICAL ASPECT**

**Abstract.** The article is devoted to one of the urgent problems of ensuring the personal safety of juvenile convicts in prison. The theoretical and methodological study of the analyzed phenomenon allowed us to single out the general opinion of scientists and the factors that determine the current state of personal safety of juvenile convicts in educational colonies of the Federal Penitentiary Service of Russia, in the pre-trial detention centers of the Russian Federal Penitentiary Service, as well as at the stages of going to the place of serving the criminal sentence in the form of deprivation of liberty and those under investigation for crimes committed in places of deprivation of liberty.

The author of the article analyzes the provisions established in article 13 of the Criminal Procedure Code of the Russian Federation, the right of all convicted persons, as well as persons in custody in the pre-trial detention center of the Russian Federal Penitentiary Service, to trial for personal security is guaranteed by the penitentiary institutions of the Russian Federal Penitentiary Service, and this right is ensured by the following imperatives: 1). Article 13 of the Law of the Russian Federation of July 21, 1993 No. 5473-I "On Institutions and Bodies Executing Criminal Sentences of Imprisonment"; 2). Article 19 of the Federal Law of July 15, 1995 No. 103-FL "On the Detention of Suspects and Accused of Committing Crimes".

The article analyzes legal scientific literature on the expression of various opinions of researchers regarding the personal safety of juvenile convicts in prison. The author completely agreed with many of the stated points of theoretical researchers, and at the same time formulating the following proposition.

The author, in turn, determines that the problem of personal security of juvenile convicts in places of deprivation of liberty is also of great importance for the relations that are taking shape in the Russian penal system as a whole. This is due to the fact that punishment always involves the restriction of the rights and freedoms of persons who committed crimes in the educational colonies of the Federal Penitentiary Service of Russia, and, as a result, the special nature of the relationship between the staff of the penitentiary institutions of the Federal Penitentiary Service of Russia and convicts.

So, the urgency of the problem today is, first of all, ensuring personal security, as well as the constitutional rights and legitimate interests of juvenile convicts in the investigation of crimes committed in the institutions of the Federal Penitentiary Service of Russia, is also manifested in the fact that depriving citizens of their freedom, the state agrees to comply their legal status, to protect the life and health of the convict.

It should be noted that the concentration of persons who committed crimes in prisons, a significant proportion of which are grave and especially grave, as well as a number of other reasons entail a real threat of new crimes committed by prisoners of various nature and degree of public danger. In this regard, there is the possibility of unlawful influence on juvenile convicts who are participants in the criminal process in the framework of a case instituted on the fact of committing a crime in the institution of the Russian penal system. As a result, the author's concept is formulated - "Ensuring personal security, rights and legal interests of juvenile convicts".

This material presented in the article does not contain information (information) related to state secrets of the Russian Federation.

**Key words:** personal security of the convict, the penitentiary institution of the Federal Penitentiary Service of Russia, legal status of a minor convict, constitutional rights and freedoms of a convicted person in prison, NLA of international law, Constitution of the Russian Federation, PEC RF, Code of Criminal Procedure, Criminal Code, witness immunity, ensuring the safety of all participants in criminal proceedings.

An essential factor in the democratization of Russian society is the constitutional consolidation of human rights and freedoms as the highest value, as well as adherence to them in accordance with generally recognized principles and norms of international law. However, the distance between the enshrined legal orders, rights and freedoms and the opportunity to really use them is too great, because the formal recognition of the broadest rights and freedoms does not mean that a person immediately becomes able to fully use the benefits that lie at the base of them. For this, an effective socio-legal mechanism for the realization of rights and freedoms is needed today, including guarantees for their provision to juvenile convicts in prison.

This is dictated, first of all, by a break with the totalitarian past, profound political and socio-economic transformations, a fundamental update of the legislation, and finally, the need to bring the legal guaranteeing functions of various bodies of the Russian state in accordance with constitutional and international human rights obligations. In this sense, the functions of bodies executing criminal punishment in the form of imprisonment of juvenile convicts are not an exception.

It is no coincidence that currently on the agenda is the problem of the legal status of the individual as a whole and of juvenile sentenced to imprisonment serving a criminal sentence in FSI "Educational Colonies" of the Federal Penitentiary Service of Russia, in particular. The deprivation of liberty of juvenile offenders as one of the types of criminal punishment is currently the most applicable in most countries of the world, including Russia.

The execution (serving) of punishment is a very complex process, affecting all aspects of the life of an individual, giving rise to many social relations. Therefore, the legal status of convicts in general, and juvenile convicts serving sentences in FSI "Educational Colonies" of the Federal Penitentiary Service of Russia, in particular, is an interdisciplinary institution.

By virtue of their specific position, these persons acquire or lose certain rights and obligations, their implementation and execution may be carried out in special forms. The study of public relations arising in this sphere fully corresponds to the logic of developing scientific knowledge on ensuring the rights and freedoms of a person and a minor citizen of Russia in general, and the legal status of juvenile convicts serving sentences in educational colonies, in particular, reinforcing and at the same time producing theoretical and practical developments and conclusions.

Thus, the genesis of scientific research on the security problem, the rights and legitimate interests of the individual in criminal proceedings demonstrates that it is necessary to solve it, starting with the protection of certain categories of persons involved in the field of criminal procedure. To date, the existing scientific knowledge on this issue in the field of criminal procedure law of Russia and related sciences is not enough to solve new problems, the answers to which clearly do not fit into the framework of the previous theoretical concepts. There is a need to synthesize and deepen the knowledge gained about personal security in the investigation of penal crimes (carried out in the institutions of the Federal Penitentiary Service of Russia), which, in turn, requires a serious attitude to the methodology for posing the problem [24].

In turn, according to Professor S.M. Zubarev (2019), it is determined that the Criminal Executive System of Russia is an element of the law enforcement system of the state and represents an integral set of institutions and bodies that perform the functions of the execution of criminal penalties and other criminal measures prescribed by the courts, decisions on the application of measures of criminal procedural restraint in the form of detention, as well as the protection and escort of convicts and persons suspected and accused of committing crimes [20].

It should be noted that most of the definitions of the investigated problem directly connect it with complex theoretical and practical issues that require study and resolution in the field of prison policy. At the same time, its central question can be formulated as follows: how to make criminal proceedings safe for juvenile convicts involved in its field in the investigation of crimes committed in the institutions of the Federal Penitentiary Service of Russia?

Also, the problem of personal safety of juvenile convicts in places of deprivation of liberty is of great importance for the relations that take shape in the Russian penal system as a whole. This is due to the fact that punishment always involves the restriction of the rights and freedoms of persons who committed crimes in educational colonies, and, as a result, the special nature of the relationship between the staff of the penitentiary institutions of the Federal Penitentiary Service of Russia and convicts. The urgency of the

problem today is primarily the provision of personal security, as well as the constitutional rights and legitimate interests of juvenile convicts in the investigation of crimes committed in the institutions of the Federal Penitentiary Service of Russia, also manifested in the fact that, depriving citizens of their freedom, the state undertakes to respect their legal status, protect the life and health of the convict.

It should be noted that the concentration of persons who committed crimes in prisons, a significant proportion of which are grave and especially grave, as well as a number of other reasons entail a real threat of new crimes committed by prisoners of various nature and degree of public danger. In this regard, there is the possibility of unlawful influence on juvenile convicts who are participants in the criminal process in the framework of a case instituted on the fact of committing a crime in the institution of the penal system of Russia.

If we consider the fact that the activity of participants in criminal proceedings has intensified, we will see that in this case its basis is precisely the protection of the rights and freedoms of the personality of the minor convict. However, the involvement of the individual in the field of criminal proceedings is often associated with a danger that may arise at the very beginning of the criminal proceedings, that is, from the moment of its initiation or even earlier - at the initial stage of checking the application, the report of the crime. Also, if we are talking about conducting an investigation in penitentiary institutions, we support the point of view that a convicted juvenile involved in the field of criminal proceedings needs to take specific measures against him to ensure his personal safety, then, if necessary, this should apply to his relatives and loved ones.

So, in our opinion, the formation of a sense of security is the main task of ensuring security, regardless of the circumstances. We also agree with the point of view of A.V. Epikhina, who believes that the personal security of the convict is a static rather than dynamic phenomenon. Of course, personal security is a state of peace, security, but in order to ensure it, it is necessary to carry out a set of measures to eliminate those actions that in some way could pose a danger to a person who is a participant in criminal proceedings [19].

So, according to L.B. Smirnova (2018), "... to regulate the list of measures aimed at ensuring the personal safety of juvenile convicts during the investigation of crimes in the penitentiary institutions of the Federal Penitentiary Service of Russia. It follows that ensuring personal security is the implementation of measures aimed at ensuring the security of persons involved in the scope of the criminal law" [32].

Also, according to Professor L.V. Brusnitsyna (2010), "the personal security measures of the convicted person are preventive and diverse legal means that ensure the protection of relevant persons during criminal proceedings and outside it and those close to those prohibited by criminal law and other forms of post-criminal influence and differing in content (way of ensuring security), the circle of persons, to by which they can be applied and other criteria" [14,15].

We fully support this point of view and, in particular, the attempt made to broadly interpret the personal security measures of the convicted person with the definition of the circle of persons, methods and conditions for their implementation [27].

So, the personal safety of the convicted person in the penitentiary institutions of the Federal Penitentiary Service of Russia is, first of all, a state of rest, that is, being protected is out of danger. Protection is the process of achieving that feeling. In this case, a set of certain measures, actions, techniques, methods aimed specifically at preventing any danger can be considered. In addition, it is necessary to determine the means of ensuring security, as well as the object of impact. In a broad sense, the object of security is not only a person, but also a procedural procedure for the production of something, such as investigative actions, etc. [10, p.89]

So, Professor N.V. Shchedrin (2008) in his scientific article "Russian criminal law in the context of doctrinal models for constructing criminal legal sanctions", suggests considering the personal safety of convicts in a semantic, legal, doctrinal and comparative interpretation [35]. We fully support his point of view and believe that security should be considered in a comparative interpretation. So, the concepts of "protection" and "security" have an interconnected interpretation. The term "defense" is firmly included in the text of the criminal procedure legislation: "... protection of the suspect, accused, defendant from unlawful criminal prosecution" [27].

Also, according to M.P. Polyakova (2001), “the personal safety of the convicted person is connected with the protection of participants in criminal proceedings from unlawful influence on them in connection with the criminal proceedings” [29].

The investigation of penal crimes is a rather complicated and specific process. Moreover, in addition to the conditions in which it is carried out, one should take into account the high level of threats emanating from some convicts to others who have become participants in criminal procedural relations as victims, witnesses, and also suspects and accused. This is primarily due to the prison subculture. In this regard, the issue of ensuring the protection of convicts involved in the field of criminal proceedings remains open today [20].

To date, the consolidation of personal security measures in the Code of Criminal Procedure of the Russian Federation should be considered as a guarantee of ensuring its legitimate interests in criminal proceedings, a means of achieving its goals and objectives, a form of counteraction to the most dangerous types of crime (organized, professional), evidence of the aspiration of the Russian state to bring national legislation into compliance with a number of international legal acts. Therefore, we are inclined to believe that Article 11 of the Code of Criminal Procedure of the Russian Federation needs to be improved [6].

For example, the content of part 3 of the above article does not give us a complete and unambiguous understanding of what the legislator means by the term “other dangerous illegal acts”. It should be agreed with the point of view of A.Y. Epikhina, who proposes to consider this wording as evaluative, used in the text of the criminal law in many articles, that is, other assaults are similar to the threat of murder, violence, etc. At the same time, there is no definition of clear boundaries for the danger of assault.

When studying article 11 of the Code of Criminal Procedure of the Russian Federation, one can also find a flaw in it, which, in our opinion, was correctly formulated in 2004 by A.Y. Epikhin, - “... the analyzed article does not trace a causal link between the infringement of a participant in the process and the fact of his assistance in criminal proceedings. Such a relationship should be, since the threat to the participant in the process may not be related to participation in the criminal process, that is, the impact on the person can be exerted not as a participant in the process, but as an ordinary citizen, for example, on the basis of hostile relations. Otherwise, the need for extensive application of security measures in cases not directly falling under their influence is not ruled out” [6,19].

In our opinion, the connection between unlawful acts or infringement of a convicted person and his level of assistance in criminal proceedings should also be identified.

The essence of the principle of protecting the rights and freedoms of man and citizen in criminal proceedings is to protect these rights and freedoms of the convicted person who is in prison. Thus, the observance of this principle lies in the fact that officials conducting criminal prosecution protect the rights and freedoms of a person and a citizen from violation by third parties, and also follow them. In addition, compliance with this principle in criminal proceedings implies the possibility of restoring violated rights.

In the analyzed publication, the main elements of its content are:

1) The duty of prosecutors to clarify the rights, duties and responsibilities of all participants in criminal proceedings;

2) Witness immunity;

3) Ensuring the safety of all participants in criminal proceedings;

4) Compensation for damage caused by the bodies conducting criminal prosecution [30].

Of course, in our opinion, not only a mechanism for implementing these provisions of the law is necessary, but also the conditions under which security measures will be implemented. To date, this issue is the most complex and quite important in the national criminal procedure law.

It seems indisputable the need to establish guarantees of protection from the moment of danger and at an earlier stage of the criminal proceedings.

Consequently, the moment of the beginning of legal relations aimed at protecting participants in the criminal process should be due to two reasons:

1) Obtaining by government bodies or officials of the investigating authority information about the threat to a person who has information about a committed or preparing crime in the institutions of the Federal Penitentiary Service of Russia;

2) The establishment of such information by the specified authorities and persons [18].

So, in the legal science of personal security of an individual is considered within the framework of a wider category of personal rights and freedoms of citizens. In foreign concepts, this category is traditionally portrayed as the most important group of human rights, the purpose of which is to ensure the freedom of the individual from arbitrary interference by the state and its organs, in protecting the personal sphere of the individual [10, p.85-86]

At one time, the English Bill of Rights of 1689<sup>1</sup>, the American Declaration of Independence of 1776, the French Declaration of the Rights of Man and Citizen of 1789 established the provisions that personal security, along with freedom, property and resistance to oppression, is an inalienable, natural human right [11].

In domestic legal thought, the security of an individual in the system of rights and freedoms of a citizen has found its consolidation in constitutional norms.

In turn, Articles 1 and 2 of the Constitution of the Russian Federation (1993, as amended in March 2020), proclaims the Russian Federation as a state of law, which is characterized by such relations regulated by law with citizens, in which the state considers a person, his life and health, personal inviolability and security, other rights and freedoms as the highest value, considers the recognition, observance and protection of the rights and freedoms, honor and dignity of man and citizen the main duty [3].

In the Russian Federation, without exception, everyone who is legally located on the territory of the Russian Federation is guaranteed state protection of the rights and freedoms of man and citizen [3].

The Russian Federation guarantees security, and to those citizens who are serving criminal sentences in places of imprisonment up to life imprisonment [5].

The concretization of these norms takes place in industry legislation, for example, the criminal-executive law of Russia. By securing in article 13 of the Criminal Procedure Code of the Russian Federation the right of convicted persons to personal security, the legislator considers it much broader than just the right to life and health [5].

Thus, the right of all convicted persons, as well as persons in custody in the pre-trial detention center of the Russian Federal Penitentiary Service of the Russian Federation to trial, is guaranteed by the duty of the penitentiary institutions of the Russian Federal Penitentiary Service, this right is ensured by the following imperatives: 1). Article 13 of the Law of the Russian Federation of July 21, 1993 No. 5473-I "On Institutions and Bodies Executing Criminal Sentences of Imprisonment"; 2). Article 19 of the Federal Law of July 15, 1995 No. 103-FL "On the Detention of Suspects and Accused of Committing Crimes" [8,9].

In turn, the safety of juvenile convicts and persons under the age of majority who are in custody of the pre-trial detention center of the Federal Penitentiary Service of Russia is ensured by all means available to the state:

- firstly, by the norms of the Constitution of the Russian Federation, fixing the legal status of a citizen and proclaiming his protection as the main duty of the state;
- secondly, the norms of the labor legislation of the Russian Federation, providing for guarantees and security measures for participants in the labor process in places of deprivation of liberty;
- thirdly, the norms of the criminal procedure legislation of the Russian Federation, which ensure impartial, comprehensive and fair consideration of criminal cases in the course of criminal procedure;
- fourthly, the norms of the criminal legislation of the Russian Federation establishing criminal liability for infringement on the life, health and dignity of a person and citizen, including in the performance of official duties, or of a convicted person;
- fifthly, the norms of the criminal executive legislation of Russia, ensuring the personal safety of juvenile convicts during the period of serving a criminal sentence in prison [26,27].

It can also be noted that the priority is for all executive bodies (criminal-executive inspections) that carry out sentences not related to isolation from society, as well as all penitentiary institutions of the Federal Penitentiary Service of Russia - ensuring the personal safety of juvenile convicts. Thus, it acquires significance and importance in ensuring the personal safety of a juvenile convict in prison.

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<sup>1</sup>Bill of Rights (1689) – “An Act declaring the Rights and Liberties of the Subject and Settling the Succession of the Crown”.

In turn, the administration of the penitentiary institutions of the Federal Penitentiary Service of Russia is obliged to ensure the safety of convicts by various means, among which should be allocated to: security and supervision; educational measures, including the application of penalties and incentives for juvenile convicts in educational colonies of the Federal Penitentiary Service of Russia; operational search measures; personal security measures for convicts under investigation for unlawful acts committed while serving a criminal sentence in prison; protecting the health of prisoners; transfer of convicts to a safe place, etc. [27].

In its turn, the criminal-executive legislative base of Russia obliges any official of the penitentiary institution of the Federal Penitentiary Service of Russia, whom the convicted person asked to ensure personal safety, immediately take all necessary legislative measures to eliminate the threat to the complainant.

Information about the danger to the convicted representative of the administration of the educational colony may come from various sources. For example, from the staff of the educational colony who oversee the convicts, from the operative officers of the penitentiary institution of the Federal Penitentiary Service of Russia, and from the convicts themselves.

The decision to prevent the danger threatening the juvenile convict is made directly by the head of the educational colony of the Federal Penitentiary Service of Russia. In urgent cases, security measures must be taken in his absence, but with the subsequent adoption of a decision on his own.

Given the reality and seriousness of the personal safety of the convicted person by other convicts or other persons, the head of the educational colony, upon his application, or on his own initiative, decides to transfer the convict to a safe place, for example, to another detachment of the colony, or solicits the Directorate of the Federal Penitentiary Service of Russia to transfer the convict to another educational colony [27].

As such a place, as established in Article 173 of the Internal Rules of the FSI “EC” of the Federal Penitentiary Service of Russia, in addition to other rooms, premises functioning in pre-trial detention (chamber type premises) can be used. The convict is transferred to a safe place for up to 90 days.

In the event that a minor convict is a participant in criminal proceedings, for example, as a witness, the head of the educational colony of the Federal Penitentiary Service of Russia makes a decision on ensuring the personal safety of the convict according to a reasoned decision (determination) of the person in whose proceedings the criminal case is being processed.

In accordance with Articles 6, 14 of the Federal Law “On State Protection of Victims, Witnesses and Other Participants in Criminal Proceedings” No. 119-FL of 08.20.2004, to ensure the safety of a person in custody or convicted person, the head of the penitentiary institution of the Federal Penitentiary Service of Russia has the right to accept the following measures:

- 1) Ensuring confidentiality of information about the protected person;
- 2) Replacement of documents of the protected person;
- 3) Change in appearance;
- 4) Temporary placement in a safe place;
- 5) The direction of the protected person and the person from whom the threat of violence emanates from their detention, detention and criminal sentences to different places of detention and serving sentences, including those who are in other constituent entities of the Russian Federation;
- 6) Transfer of the protected person or person from whom the threat of violence comes from one place of detention or serving a sentence to another;
- 7) Separate detention of the protected person and the person from whom the threat of violence comes;
- 8) Changing the measure of restraint or punishment to the protected person in the manner prescribed by the Code of Criminal Procedure [6,7].

In turn, the division into constitutional and sectoral legislation is determined by the special social content of constitutional rights and freedoms, the highest level of their legal registration, place and role in relation to other rights. The need to study the category of “personal security” in the science of penal law arose in connection with the transition of our country to the democratic path of development [13, p.214].

There is no unanimity in the definition of what constitutes the personal safety of prisoners. Professor A.G. Peregudov was one of the first to address the problem of personal security of the domestic penitentiary system. He suggested that personal security in correctional institutions of Russia be

understood as a system of relations and legal norms governing these relations, to ensure calmness, inviolability of life and health of employees, prisoners, other citizens involved in the activities of these institutions, their normal work and rest, as well as normal the functioning of correctional institutions in general and its units in particular [28].

A slightly different opinion was expressed by M.A. Gromov (2006), considering security in the penitentiary institution of the Federal Penitentiary Service of Russia as a state of protection of employees, convicts, other persons, as well as the prison as a whole from possible threats and dangerous encroachments [16].

In his dissertation research P.V. Dikhtievsky (2004), defines the security of the individual as created and guaranteed by the state through the norms of objective law, such a position of the individual in society in which there is the possibility of an unbroken use of rights and freedoms, and a state of protection of the vital interests of the individual from possible harm, as well as prevention dangers and threats arising in any area of public life [17].

It seems that such approaches to personal security in conditions of deprivation of liberty bring to the fore the most important human interests. Their satisfaction provides the existence and possibility of the progressive development of personality. At the same time, in the context of a modern security strategy, it seems not quite right to consider the interests of the individual through the prism of vital and secondary ones. This approach does not meet democratic ideology. In this regard, V.N. Chorny (2019) rightly notes that the category “security of the personality of the convicted person” is a comprehensive guarantee that allows the convicted person to exercise his rights, freedoms and legitimate interests in prison [34].

The practice of the execution of criminal sentences shows that the employees of the penitentiary system interpret the subjective right of convicts to personal security as the maximum acceptable level of ensuring their life and health. Often in places of deprivation of liberty (FSI “EC” of the Federal Penitentiary Service of Russia) threats of mental and sexual violence, the right to respect for physical, spiritual and moral integrity, neglect of the basic needs of the personality of a minor convict are still out of sight of personnel. It seems that this state of affairs does not correspond to the realities of today and the ongoing processes of reality in society in general and the prison sphere in particular. There is a need to move to a higher stage of development. The consequence of this should be a change in the content of the right to personal security of convicts and its presentation in a more developed form. With this approach, citizens should be fully protected from various types of threats, have the opportunity to fully develop in prison [10, p.85].

Further strengthening the security of the personality of the convicted person in places of deprivation of liberty in the area under consideration will be facilitated by the improvement of the existing criminal executive legislation of Russia and the creation of an effective mechanism for its application. The origins of the defenselessness of the personality of a minor convict in the Russian Federation as a whole and in conditions of deprivation of liberty in particular are in line with the general crisis of Russian society, the overcoming of which is likely to take in the coming decades. These circumstances require the search for new approaches to resolving brewing contradictions in the criminal-executive policy of Russia in the field of ensuring the right to personal security of juveniles sentenced to imprisonment [27,33].

At present, a strong criminal executive legislative base has been created in Russia, which regulates the basis of the legal status of juvenile convicts of criminal sentences, but it is far from perfect. The effectiveness of ensuring the legal status of juvenile offenders to any degree of criminal law and the unquestioning execution of all the requirements of a court sentence will determine the effectiveness of achieving the goals of the criminal liability of the convicted person [33].

For example, the legal status of persons sentenced to different types of criminal sentences is not the same, that is, there is an inequality in the rights of these persons. In other words, the legal status of juvenile convicts in places of deprivation of liberty is determined by the nature, degree of public danger, the gravity of the crime committed by him and the punishment imposed for this crime. The content of the sentence decisively affects the formation of the legal status of a minor convict. So, in the Criminal Executive Code of the Russian Federation, it is determined that the employee of the penitentiary institution of the Federal Penitentiary Service of Russia, who is carrying out the punishment, is obliged to show respect for the rights of the convicted person, to ensure their protection and legal implementation. It

is equally necessary to achieve the fulfillment of all duties on the part of the convict. This is the practical implementation of the principle of legality in the activities of bodies executing sentences [5,22,33].

At the same time, the main principles of supervision as a means of ensuring the personal safety of a juvenile convict in the institution of the Federal Penitentiary Service of Russia are:

1) Efficiency. The supervision of convicts involves the active use of a wide variety of - material, human, financial and other - resources. Surveillance in places of deprivation of liberty, like any useful activity of people, should be carried out consciously, purposefully, rationally, effectively;

2) Prioritization. The decision is made depending on the significance of the tasks, i.e. when supervising the staff of places of deprivation of liberty, it is recommended to perform tasks based on importance, relevance [31].

The principles reviewed reflect the main features of supervision activities in prisons. In their totality, they determine and concretize the ways and means of solving the tasks of supervision and ensure its optimal functioning; also, they enforce strict and steady observance and enforcement by the subjects and objects of supervision of laws and by-laws.

Given the above, we consider it necessary to formulate the concept of "ensuring personal security, rights and legitimate interests of juvenile convicts". This is, first of all, ensuring the safety of the rights and legitimate interests of convicts - a comprehensive institution consisting of a set of actions by officials based on the norms of criminal procedure, operational search and departmental legislation, including legal and organizational safety measures for convicts involved in the field criminal proceedings as victims, witnesses, accused and suspects in the investigation of crimes in prisons of the Federal Penitentiary Service of Russia.

Also, in our opinion, the right to personal safety of juvenile convicts in the execution of criminal sentences of imprisonment at the present stage is represented as their natural, basic right, guaranteed by international and Russian legislation, ensuring the absence of dangers and their progressive development, through the exercise of rights, freedoms and legitimate interests.

And finally, in the investigation of penal crimes, the safety, rights and legitimate interests of juvenile convicts in places of deprivation of liberty must be respected. In carrying out the above, the activities of the inquiry body will be considered effective.

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#### **РЕСЕЙ ФЕДЕРАЛДЫ ҚЫЛМЫСТЫҚ-АТҚАРУ ҚЫЗМЕТІ ТҮРМЕСІНДЕГІ КӘМЕЛЕТКЕ ТОЛМАҒАН СОТТАЛҒАНДАРДЫҢ ЖЕКЕ БАСЫНЫҢ ҚАУІПСІЗДІК ҚҰҚЫҒЫ: ТЕОРИЯЛЫҚ ЖӘНЕ ӘДІСНАМАЛЫҚ АСПЕКТ**

**Аннотация.** Мақала түрмедегі кәмелетке толмаған сотталғандардың жеке қауіпсіздігін қамтамасыз етудің өзекті мәселелерінің біріне арналған. Талданған құбылысты теориялық және әдіснамалық зерттеу Ресей Федералды пенитенциарлық қызметінің тергеу изоляторларында, сондай-ақ қылмыс жазасын өтеу орнына бару сатыларында кәмелетке толмаған сотталғандардың жеке қауіпсіздігінің қазіргі жағдайын анықтайтын факторлардың және ғалымдардың жалпы пікірін, бас бостандығынан айыру түріндегі және бас бостандығынан айыру орындарында жасалған қылмысы үшін тергеуде тұрған адамдарды анықтауға мүмкіндік берді.

Мақала авторы Ресей Федерациясының Қылмыстық іс жүргізу кодексінің 13-бабында белгіленген ережелерді, барлық сотталғандардың, сондай-ақ Ресей Федералды қылмыстық-атқару қызметі тергеу изоляторында қамауда отырған адамдардың жеке қауіпсіздігі үшін сот ісіне Ресей Федералды пенитенциарлық қызметінің пенитенциарлық мекемелері кепілдендірген құқығына талдау жүргізген. Бұл құқық мынадай императивтермен: 1) Ресей Федерациясының 1993 жылғы 21 шілдедегі № 5473-І «Бас бостандығынан айыру туралы қылмыстық үкім шығаратын мекемелер мен органдар туралы» Заңының 13-бабы; 2) «Қылмыстарға күдіктілер мен айыпталушыларды ұстау туралы» 1995 жылғы 15 шілдедегі № 103-ФЗ Федералдық заңының 19-бабымен қамтамасыз етіледі.



Мақалада түрмедегі кәмелетке толмаған тұтқындардың жеке басының қауіпсіздігі туралы зерттеушілердің әртүрлі пікірлерін білдіруге арналған құқықтық ғылыми әдебиеттер талданады. Автор теориялық тұрғыда зерттеушілердің айтылған пікірлерімен толық келісіп, сонымен бірге келесі ұсынысты негіздейді.

Автор кәмелетке толмаған сотталғандардың бас бостандығынан айыру орындарындағы жеке бастың қауіпсіздік мәселесі, сонымен бірге, тұтастай алғанда Ресейдің қылмыстық-атқару жүйесінде қалыптасқан қатынастар үшін де өте маңызды екенін анықтайды. Бұл жаза әрқашан Ресей Федералды Қылмыстық атқару қызметінің оқу колонияларында қылмыс жасаған адамдардың құқығы мен бостандығын шектеуді қамтитындығына және нәтижесінде Ресей Федералды пенитенциарлық қызметінің пенитенциарлық мекемелерінің қызметкерлері мен сотталғандар арасындағы қарым-қатынастың ерекше сипатына байланысты.

Сонымен, бүгінде мәселенің өзектілігі, ең алдымен, жеке қауіпсіздікті қамтамасыз ету, сондай-ақ Ресей Федералды қылмыстық атқару қызметі мекемелерінде жасалған қылмыстарды тергеу барысында кәмелетке толмаған сотталғандардың конституциялық құқықтары мен заңды мүдделері болып саналады, сонымен қатар азаматтарды бас бостандығынан айыру арқылы мемлекет олардың құқықтық мәртебесін сақтауға, сотталушының өмірі мен денсаулығын қорғауға алатындығынан көрінеді.

Пенитенциарлық мекемелерде қылмыс жасаған адамдардың шоғырлануы, олардың едәуір бөлігі ауыр және ерекше ауыр, сондай-ақ басқа да бірқатар себептер сотталғандардың қоғамдық қауіптілік сипаты мен дәрежесі бойынша түрлі жаңа қылмыстарды тудыратынын атап өткен жөн. Осыған орай Ресейдің қылмыстық-атқару жүйесі мекемесінде қылмыс жасау фактісі бойынша қозғалған іс аясында қылмыстық процестің қатысушысы болып саналатын кәмелетке толмаған сотталғандарға заңсыз ықпал ету мүмкіндігі бар. Нәтижесінде «Кәмелетке толмаған сотталғандардың жеке қауіпсіздігін, құқықтары мен заңды мүдделерін қамтамасыз ету» авторлық тұжырымдамасы жасалады.

Мақалада келтірілген материалда Ресей Федерациясының мемлекеттік құпиясына қатысты мәлімдеме (акпарат) жоқ.

**Түйін сөздер:** сотталушының жеке басының қауіпсіздігі, Ресей Федералды Қылмыстық атқару қызметінің пенитенциарлық мекемесі, кәмелетке толмаған сотталушының құқықтық жағдайы, түрмеде сотталған адамның конституциялық құқығы мен бостандығы, Халықаралық құқық НҚА, Ресей Федерациясының Конституциясы, РФ РЕК, Қылмыстық іс жүргізу кодексі, Қылмыстық кодекс, куәгерлік иммунитет, қылмыстық процеске қатысушылардың қауіпсіздігін қамтамасыз ету.

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### ПРАВО НЕСОВЕРШЕННОЛЕТНИХ ОСУЖДЁННЫХ, НАХОДЯЩИХСЯ В ПЕНИТЕНЦИАРНЫХ УЧРЕЖДЕНИЯХ ФСИН РОССИИ, НА ЛИЧНУЮ БЕЗОПАСНОСТЬ: ТЕОРЕТИКО-МЕТОДОЛОГИЧЕСКИЙ АСПЕКТ

**Аннотация.** Статья посвящена одной из актуальных проблем – обеспечения личной безопасности несовершеннолетних осуждённых, находящихся в местах лишения свободы. Проведённое теоретико-методологическое исследование анализируемого явления позволило нам выделить общее мнение учёных и факторы, определяющие современное состояние личной безопасности несовершеннолетних осуждённых, находящихся в воспитательных колониях ФСИН России, в следственных изоляторах ФСИН России, а также на этапах следования к месту отбывания уголовного наказания в виде лишения свободы и находящихся под следствием за совершённые преступления в местах лишения свободы.

Автором статьи анализируются положения, установленные в статье 13 УИК РФ, право на личную безопасность всех без исключения осуждённых, а также находящихся лиц под стражей в следственном изоляторе ФСИН России до суда гарантируется обязанностью пенитенциарных учреждений ФСИН Росси. Данное право обеспечивается следующими императивами: 1) статья 13 Закона РФ от 21 июля 1993 г. № 5473-1 "Об учреждениях и органах, исполняющих уголовные наказания в виде лишения свободы"; 2) статья 19 Федерального закона от 15 июля 1995 г. № 103-ФЗ "О содержании под стражей подозреваемых и обвиняемых в совершении преступлений".

В статье проведен анализ юридической научной литературы по высказыванию различных мнений исследователей по поводу личной безопасности несовершеннолетних осуждённых, находящихся в местах лишения свободы. Со многими высказанными положениями исследователей-теоретиков автор полностью согласился, при этом сформулировал следующее суждение.

Автор в свою очередь определяется с тем, что проблема личной безопасности несовершеннолетних осуждённых, находящихся в местах лишения свободы, имеет огромное значение и для отношений, которые складываются в уголовно-исполнительной системе России в целом. Это обусловлено тем, что наказание всегда предполагает ограничение прав и свобод лиц, совершивших преступления в воспитательных колониях ФСИН России, и, как следствие – особый характер взаимоотношений персонала пенитенциарных учреждений ФСИН России и осуждённых.

Так, актуальность проблемы на сегодняшний день – это, прежде всего, обеспечение личной безопасности, а также конституционных прав и законных интересов несовершеннолетних осуждённых при расследовании преступлений, совершенных в учреждениях ФСИН России, проявляется ещё и в том, что, лишая граждан свободы, государство обязуется соблюдать их правовой статус, охранять жизнь и здоровье осуждённого.

При этом следует отметить, что концентрация в пенитенциарных учреждениях лиц, совершивших преступления, значительная доля из которых тяжкие и особо тяжкие, а также ряд других причин влекут за собой реальную угрозу совершения заключёнными новых преступлений, различных по своему характеру и степени общественной опасности. В связи с этим появляется возможность противоправного воздействия на несовершеннолетних осуждённых, являющихся участниками уголовного процесса в рамках дела, возбужденного по факту совершения преступления в учреждении уголовно-исполнительной системы России. Вследствие чего, формулируется авторское понятие – «Обеспечение личной безопасности, прав и законных интересов несовершеннолетних осуждённых».

Данный материал, представленный в статье, не содержит сведений (информацию), относящихся к государственной тайне Российской Федерации.

**Ключевые слова:** личная безопасность осуждённого, пенитенциарное учреждение ФСИН России, правовое положение несовершеннолетнего осуждённого, конституционные права и свободы осуждённого, находящегося в местах лишения свободы, НПА международного права, Конституция РФ, УИК РФ, УПК РФ, УК РФ, свидетельский иммунитет, обеспечение безопасности всех участников уголовного судопроизводства.

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