

The Concept and Legal Basis for the Transfer of Persons Sentenced to Deprivation of Liberty to Serve a Sentence in a Foreign State in the Field of International Cooperation of Post-Soviet Countries

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Abstract: The purpose of the study is to analyse the definition and legal basis of the concept of transfer of persons sentenced to imprisonment. The main research methods were theoretical: analysis and synthesis, classification. The article discusses topical issues related to the concept and legal grounds for the transfer of persons sentenced to imprisonment to serve their sentences in the framework of international cooperation. The article analyses the norms of international legal acts and national legislation of post-Soviet countries. It is noted that, among other types of transfer of persons, a special place is occupied by the transfer of a convicted person for the execution of a sentence, which testifies to the relevant practice of post-Soviet states. But the transfer of convicted persons to serve a sentence has a history of legal regulation for a little more than half a century, therefore, both in legal regulation and in the theory of criminal procedure there is no single approach to defining the concept of transfer of convicted persons. The author comes to the conclusion that the transfer of persons to a foreign state to serve their sentences is ensured by effective international cooperation in the field of criminal proceedings. The practical significance of the study lies in the fact that an idea is proposed for the development and improvement of national criminal legislation, as well as the effectiveness of actions aimed at resolving this issue.

Keywords: Execution of a sentence, international treaties, criminal procedure legislation, transfer of a criminal case, imprisonment.

INTRODUCTION

The transfer of persons is one of the forms of international cooperation in the field of criminal proceedings. This issue occupies a special place in the legal regulation of the institution of transfer of persons. The transfer institution is divided into two parts: the first is the transfer of persons sentenced to imprisonment to serve their sentence, i.e. execution of a sentence; the second is the transfer of persons for the execution of other court decisions. There is a certain type of transfer of persons for a procedural action, which in the legislation of post-Soviet countries is known as "temporary transfer of persons" and which applies to

persons in custody. However, this issue is regulated not as an institution for the transfer of persons, but as a historical institution of international legal assistance in criminal cases (Abdulloev 2016). The UN Model Treaty provides for the transfer of supervision of offenders who have been conditionally sentenced or released on parole, but this does not constitute a transfer of persons by content (UN General Assembly Resolution... 1990).

Among other types of transfer of persons, a special place is occupied by the transfer of a person convicted for the execution of a sentence, which testifies to the relevant practice of post-Soviet states. So, in 2020, up to 27000 foreign citizens out of just over 587000 prisoners in the Russian Federation were in the institutions of the penal system of the Russian

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Federation. For three years (2010-2013), their number has remained virtually unchanged. About half of them were convicted foreigners – immigrants from the countries of Central Asia: Tajikistan, Uzbekistan, Kazakhstan, Kyrgyzstan. As well as citizens of Azerbaijan, Ukraine, Belarus, Moldova, Georgia, the Baltic countries – practically the entire post-Soviet space (FPS: Every third convicted... 2020). The transfer of a convicted person for the execution of a sentence is somewhat similar to the surrender of a person for the execution of a sentence. Their formal similarity has led to the fact that in some criminal procedural laws and scientific literature, instead of “transferring convicted persons”, “extradition of convicted persons” is used (Shurukhnova 2006). Chapter V of the Law of Georgia “On International Cooperation in the Field of Criminal Law” (2010) is called “Extradition of persons sentenced to imprisonment to serve their sentence”. In terms of content, this chapter provides for the transfer of persons sentenced to imprisonment to serve their sentence. The Criminal Procedure Code (CPC) of Turkmenistan provides for Art. 558 “Grounds for the extradition of a person sentenced to imprisonment for serving a sentence in the state of which he is a citizen”. Transfer of a convicted person to imprisonment in the sense of this article is the transfer of a person to serve a sentence to the state of which he is a citizen.

It should be noted that the transfer of convicted persons differs significantly from the extradition of persons for the execution of a sentence:

- upon the transfer of a convicted person, the final decision of a foreign court is executed, and when a person is extradited for the execution of a sentence, the final decision of a court of one's own state is executed;
- before the transfer, a convicted person is in the territory of a foreign state in which he committed a criminal offence, and before extradition, a person who committed a crime was hiding in a territory of a foreign state;
- the transfer of persons depends on the will of a convicted person, and the extradition of a person is made against his will;
- the transfer of convicts is a humane act in which a person is detained and which is carried out with his consent, and the extradition of a person is the prosecution of a person to serve a criminal sentence;
- the process of execution of the sentence during the transfer of a convicted continues, since the sentence of the foreign court has entered into force, and upon the extradition of a person for the execution of a sentence, it is stopped or begins after the extradition;
- when transferring convicts, only a citizen or a stateless person who has a permanent place of residence in the territory of the receiving state is transferred, and the extradition of a person is possible regardless of citizenship in accordance with the norms of national law and international treaties;
- the transfer of convicted persons is part of the institution of transfer of persons, and the extradition of persons for the execution of a sentence is an integral part of the institution of extradition of persons.

It should be noted that the transfer of persons and the extradition of persons have many common features, ranging from the protection of rights to the accompaniment of persons in custody in both processes (Criminal Procedure Code... 2009). The problem that the competent authorities face is that a person commits a crime on the territory of one state, and later commits a crime on the territory of a foreign state. In a foreign state, persons are sentenced to imprisonment. The competent authorities of a state for the purpose of solving a criminal case turn to the competent authorities of a foreign state. The question arises: in these cases, is it necessary to apply the rules on the extradition of persons or rules on the transfer of persons? The transfer of persons sentenced to imprisonment for serving their sentences has a history of legal regulation a little over half a century, and the extradition of persons – a history of several millennia.

One of the main problems in the formation of the institution of transfer of persons has become the problem of mutual recognition of the final decisions in a criminal case. Pre-revolutionary internationalist F. Martens (2008) writes that “with regard to the execution of a sentence, it was established, as a general rule, consecrated by both practice and theory, that the decision of a foreign criminal court outside the place of the decision is not subject to execution”. F. Martens raises the question of “the execution of sentences of foreign criminal courts”, but not the problem of transferring convicted persons, it is about the consequences, recognised and not recognised foreign

sentences. As noted by the lawyer I. Foyntsky (1996), "... not a single state has yet agreed to undertake the obligation to carry out the convictions of other people's judicial places. From the non-binding nature of foreign criminal sentences in their entirety, it follows that they are non-binding in any part of a punitive nature". Although at that time there was a need of states for cooperation in the penitentiary field, one of the goals of cooperation and bringing convicts to a normal life coincides with the goal of transferring the convicted person (Omigov 2010). The transfer of convicts is impossible without recognition of the sentences of foreign courts.

MATERIALS AND METHODS

The object of the research is the history and formation of the transfer of persons sentenced to imprisonment to serve their sentences in a foreign state in the field of international cooperation of post-Soviet countries. The subject of the research consists in the definition of the concept of the transfer of persons, the characteristics of the implementation of this process in practice. During the research, the theoretical methods were used. To define the concept and legal basis for the transfer of persons, the method of analysis of the literary base was used. Proceeding from this, with the help of the synthesis method, the concepts of the transfer of persons and the extradition of persons were separated, using the classification method, the main differences between these concepts were determined; the main regulatory documents that regulate the transfer of persons sentenced to imprisonment were highlighted; it was revealed that the transfer of persons within the framework of international cooperation is called an institution.

The need to study and formulate a specific definition of the transfer of persons and determine the legal basis for its implementation arose from the analysis of statistical data on this issue. The average number of convicts from the far abroad does not exceed 350 people in the Russian Federation and is represented by people from China, Nigeria, Vietnam, Afghanistan, Cameroon, Mongolia (more than 40 countries in total). Annually the Russian Federation transfers about 300 people. So, in 2013, 292 people were sent to serve their sentences back to their homeland, mostly citizens of Azerbaijan, Ukraine, Belarus, Moldova, Tajikistan, and Kyrgyzstan. As of July 1, 2017, the head of the department for the transfer of convicts to the state of their citizenship of the Federal State Institution "Central Normative and Technical Laboratory of the Federal

Service for the Execution of Punishments" of Russia A. Smirnov (2017) notes that 29 397 foreign citizens were serving their sentences in correctional institutions of the Russian Federation. Of these, the largest number are convicted citizens of Tajikistan – 8002 people, Uzbekistan – 6362, Ukraine – 4761, Azerbaijan – 2350, Kyrgyzstan – 1417, Armenia – 1322, Moldova – 1200 people. The number of citizens of the states of the so-called "far abroad" is 429 convicts.

In 2015, 267 were transferred from the Russian Federation (RF), 110 convicts were received in the RF, 303 were transferred from the RF in 2016, and 110 convicts were received in the RF (Smirnov 2017). In 2017, 307 convicts were transferred from the Russian Federation for further serving their sentences to their states of citizenship, 58 convicted citizens of the Russian Federation were received in the Russian Federation (The transfer of convicts... 2020). According to the Committee of the Penitentiary System of the Ministry of Internal Affairs of the Republic of Kazakhstan, as of April 1, 2017, 1320 foreign citizens were serving their sentences in correctional institutions of Kazakhstan, of which 1284 were citizens of the Commonwealth of Independent States (CIS) countries. Over the past 3 years, the number of foreign citizens serving sentences in Kazakhstan has decreased by one third. In 2016, correctional institutions in Kazakhstan accepted 19 citizens of Kazakhstan who were serving sentences abroad (mainly in Russia). 96 foreigners convicted by Kazakh courts have been transferred to foreign states (Ryskulov 2017). Over the past 10 years, 380 convicted persons have been transferred from the Republic of Kazakhstan (the majority are citizens of the CIS countries) and 195 citizens of Kazakhstan convicted by foreign courts have been received. And over the past 5 years, 162 citizens of Kazakhstan convicted abroad were transferred to the Republic of Kazakhstan for further serving their sentences. Transferred abroad 315 foreign citizens, most of whom are citizens of Russia (Ryskulov 2017). The statistical data on the execution of sentences by convicted foreign citizens show that each of them could apply for transfer to the state of which they are citizens.

RESULTS AND DISCUSSION

Development of Transfer of Persons Sentenced to Imprisonment

In Soviet times until the 70s of the 20th century, the recognition and enforcement of decisions of foreign courts from the original (Kotlyarevsky *et al.* 1926) to the

middle of existence “had a narrowly focused character and concerned mainly civil legal relations” (Volzhenkina 2001). International treaties of the USSR with foreign states on legal assistance in criminal cases provided for mutual legal assistance and the extradition of persons, but the issues of transferring convicts were not resolved within the framework of the USSR treaties with foreign states on legal assistance. Mutual legal assistance and extradition of persons are to some extent a fight against crime, but the transfer of convicts is essentially not aimed at achieving this goal. The European Convention on the International Validity of Criminal Judgments was adopted on May 28, 1970. According to Art. 9 of this Convention, “a convicted person who is under arrest in the requesting state and who is transferred to the requested state for the purpose of execution of punishment will not be tried, sentenced or arrested in order to enforce a sentence or arrest warrant in connection with any crime committed before its transfer, other than that in connection with which the enforceable sentence was passed ...” (European Convention on the International... 1974). This article provides for certain grounds and conditions for the transfer, i.e. this convention does not fully resolve the issue of the transfer of convicts.

The role of the UN in the development of international cooperation in the transfer of persons, as well as other types of international cooperation in criminal matters, is significant. It was “the decision to introduce into practice the institution of the transfer of convicts that was made at the 5th UN Congress in 1975” (Samarin 2011). As F. Davydov and I. Zimina (2002) note, “it was assumed that this would increase the effectiveness of the fight against crime, relapse, and improve the social rehabilitation of convicts”. And there is a different opinion regarding the introduction of this legal mechanism. According to K. Kolibab (1999), “in order to effectively implement the goals of punishment in the second half of the 20th century the institution of transfer of convicted foreigners to serve their sentences in the states of which they are citizens was created”.

In the history of the formation and development of the transfer of a convicted person to the state of which he is a citizen, the actions of the competent bodies of the USSR are of great importance in the world. The Convention on the Transfer of Persons Sentenced to deprivation of liberty to serve sentences in the state of which they are citizens was adopted in Berlin on May 19 (Convention on the transfer... 1978) in one copy in Russian, which regulated the issues of transferring

persons to the “countries of the socialist bloc”. The principle of humanism played a key role in the transfer of convicted persons. The purpose of this convention is the desire to develop the established relations of mutual trust and cooperation, given that the serving of sentences by convicts in the state of which they are citizens has contributed to more effective achievement of the goals of the correction and re-education of offenders. As V. Galkin (1981), “the conclusion of the Convention leads to the emergence of a fundamentally new institution that strengthens the internationalisation of Soviet criminal, criminal procedural and corrective labour law”.

In connection with the conclusion by the USSR of the Convention on the Transfer of Persons sentenced to deprivation of liberty to serve sentences in the state of which they are citizens, signed on May 19, 1978, the Decree of the Presidium of the Supreme Soviet of the USSR was adopted on the procedure for fulfilling the obligations arising for the USSR from the Convention On Transfer of Persons sentenced to deprivation of liberty to serve sentences in the state of which they are citizens, dated August 10, 1979, No. 563-X (Decree of the Presidium of the USSR... 1979). This Decree regulated the issues of the competent authorities of the USSR and their competence, the execution of the sentence of a foreign court, revision of the sentence, transit transportation of convicts through the territory of the USSR. After almost four years, the member states of the Council of Europe and several other states signed the Convention on the Transfer of Sentenced Persons (1983), adopted in Strasbourg on March 21 (in English and French, both texts having equal power). According to Art. 3 of this Convention, “the convicted person may be transferred ... subject to conditions ... if he a national of the administering State”.

The model agreement on the transfer of foreign prisoners and the recommendations for the treatment of foreign prisoners are advisory in nature compared to the two conventions mentioned above, which provide for the transfer of persons convicted only in their state of nationality (General Assembly Resolution... 1985). The model agreement provides for “the return of persons convicted of a criminal offence abroad to their country of citizenship or permanent residence to serve their sentences”. That is, according to the provisions of the model agreement on the transfer of foreign prisoners, convicted persons are transferred not only to the country of their citizenship but also to their permanent place of residence. Permanent residence is a broad concept and provides an opportunity for the

transfer of a wider range of people. Similar norms were stipulated by the Agreement between the USSR and the Republic of Finland on the mutual transfer of persons sentenced to imprisonment for serving sentences (1990), dated November 8. The preamble of this treaty provided that "... serving by convicted persons of punishment in the state of which they are citizens or in whose territory they permanently reside ...". According to Part 2 of Art. 1 of this treaty, "the treaty equally applies to persons who have permanent residence in the territory of the Contracting States, regardless of their citizenship" (Agreement between the USSR... 1990). And this practice is still valid. According to Art. 3 of the Agreement between the Republic of Tajikistan and the Islamic Republic of Afghanistan on the transfer of persons sentenced to serve a sentence to imprisonment (2006) dated July 12, the transfer of convicted persons is made in relation to citizens and persons permanently residing in the territory of host states, based on the UN principles on convicts and this agreement.

As noted by A. Shatalov (2016), "in the Soviet period, the convict had the right to apply to the USSR Prosecutor's Office or to the competent authority of the state of which he is a citizen, with a petition to transfer him to serve his sentence in this state. The petition could be submitted both by the convicted person on his own initiative or with the help of the competent authorities of a foreign state, and by his relatives. It should be noted that not only citizens of the USSR, but also persons with permanent residence on the territory of the USSR had this right". The Inter-American Convention on the Service of Criminal Sentence Abroad (1993) was adopted on June 9, in Managua (Nicaragua) by the member states of the Organization of American States. It is noteworthy that some post-Soviet states have ratified this convention. For example, the Republic of Kazakhstan has ratified this convention on the basis of the Law of the Republic of Kazakhstan "On Ratification of the Inter-American Convention on the Service of Criminal Sentence Abroad" (2015) dated October 13, No. 360-V.

After the collapse of the USSR, issues of transferring convicts arose between its former republics. The Minsk Convention on Legal Assistance and Legal Relations in Civil, Family and Criminal Cases of January 22, 1993, which was adopted on the basis of the Soviet doctrinal heritage, does not regulate the transfer of convicted persons, but regulates the issues of legal assistance and extradition of persons. In addition, within the framework of the Model CPC for the

member states of the Commonwealth of Independent States of February 17, 1996, and the first CPC after the collapse of the USSR in the post-Soviet space, the CPC of Uzbekistan of 1994 did not regulate the transfer of convicted persons (Hukuk 2010). It should be noted that before and after the codification of issues of international cooperation in 2010 in the Criminal Procedure Code of the Republic of Uzbekistan (2019) there is no provision on the transfer of convicted persons. The post-Soviet states have concluded bilateral treaties between themselves (Agreement between the Russian... 1993; Agreement between the Russian... 1994; Treaty between the Russian... 1995; Agreement between the Russian... 1996; Treaty between the Russian... 2001; Agreement between the Russian... 2002) and with other states (Treaty between the Russian... 1998; Treaty between the Russian... 2002; Convention between the Russian... 2003; Treaty between the Russian... 2004; Agreement between the Russian... 2005; Convention between the Russian... 2006; Treaty between the Russian... 2006; Treaty between the Russian... 2009; Treaty between the Russian... 2013a; Treaty between the Russian... 2013b; Treaty between the Russian... 2015; Agreement between the Russian... 2015). Within the framework of the CIS, the Convention on the Transfer of Sentenced to Deprivation of Liberty for Further Serving of Sentence (1998) of March 6, in Moscow was adopted. This convention is valid in most of the territory of the post-Soviet space. In accordance with the preamble of this convention, "... convicted persons serve their sentences in the state of which they are citizens, and stateless persons permanently residing in its territory ..." (Convention on the Transfer... 1998).

Thus, the history of the formation and development of the transfer of persons indicates that citizenship is of great importance in the transfer of convicted persons – this is reflected in the Berlin, European, Inter-American conventions. In the course of its development, in addition to citizens of states, a "permanent resident" was also added, which is subject to transfer: after the adoption of the CIS Convention, the concept of "a person permanently residing in the territory of a state" was specified and proposed – "if they are stateless persons". In the authors' opinion, limiting the transfer of convicted persons only based on their citizenship does not correspond to modern realities and such values of the transfer of convicted persons as humanity, and the purpose of transferring persons – social rehabilitation, closer to their relatives (Resolution of the Plenum... 2015). Currently, the Agreement between the Russian

Federation and the Republic of Tajikistan on the settlement of issues of dual citizenship (1995) of September 7, is in force. This is the only treaty on dual citizenship for both Russia and Tajikistan. It is proposed to conclude an agreement between these countries on the transfer of convicted persons, taking into account the given opportunity: a person with dual citizenship has the right to choose where he will carry out his sentence. The competent authorities should be guided by the provisions on the transfer of sentenced persons that are proposed.

As T. Reshetneva (2017) fairly notes, “nevertheless, it seems preferable to transfer a convicted bipatrid from the sentencing state, whose citizenship a convicted person possesses, to the state of execution, whose citizenship this person also possesses. ... At the same time, the court, when deciding the issue of transferring a convicted person, will have to establish the fact of a “close” connection of a convicted person with one of the states of his citizenship, and if the state of close connection of a convicted person turns out to be the state of the intended execution of the sentence, and not the state of sentencing, in the absence of other obstacles to refusal, it seems reasonable to make a decision on the transfer of a convicted person”.

Transfer of Persons Sentenced to Imprisonment for Serving Sentences in the State of their Citizenship

The concept of “transfer of persons” is widely used in the criminal procedural legislation of post-Soviet states and in scientific literature (Efendiev 2009; Minsafina 2009; Buyanova 2010). For example, Ch. 55 of the Criminal Procedure Code of the Russian Federation, Ch. 50 of the Criminal Procedure Code of Tajikistan, Ch. 49 and 65 of the new Criminal Procedure Code of Kyrgyzstan are called “Transfer of a person sentenced to imprisonment for serving a sentence in a state of which he is a citizen”. The study shows that “the transfer of persons sentenced to imprisonment for serving their sentences in the state of their citizenship” is not very expedient, since their permanent place of residence, which follows from the provisions of some international treaties, is not taken into account. The transfer of persons sentenced to imprisonment for serving the sentence fully reflects the essence of this type of transfer of persons. Regarding the nature of the transfer of persons sentenced to imprisonment to serve their sentence, the authors’ position has already been noted above. But in the scientific literature and the criminal procedural legislation of the post-Soviet states there is no unified

approach to this issue: Is the transfer of persons sentenced to imprisonment to serve their sentences in the state of their citizenship – is this an institution of criminal procedure? Are the transfer of convicted persons and the execution of a sentence by a foreign court different concepts; institutions, or is the execution of a sentence one of the procedural mechanisms for transferring persons?

V. Samarin (2006) notes the following types of international legal assistance in criminal cases: “legal assistance in the narrow sense (conducting procedural actions); extradition of a person for attraction to being held liable or serving a sentence; the implementation of criminal prosecution of persons; execution of decisions of courts of foreign states in criminal cases; transfer of convicts to serve their sentences in the country of their citizenship”. According to V. Samarin (2006), “the transfer of convicts to serve their sentences in the country of their citizenship” is an independent form and another form of “execution of decisions of courts of foreign states in criminal cases” is divided. The legislation of Georgia distinguishes between the two named concepts. Thus, the Law of Georgia “On International Cooperation in the Field of Criminal Law” (2010) of October 1, divides the transfer of convicted persons in two chapters: Ch. 5 is called “Extradition of persons sentenced to imprisonment to serve their sentence” and Ch. 6 – “execution of the sentence”.

The Criminal Procedure Code of Azerbaijan does not provide for the transfer of convicts. Chapter 58 “Proceedings in the execution of sentences or other final court decisions” provides that “the courts of the Republic of Azerbaijan shall consider the issues of the execution of sentences or other final decisions of the courts of foreign states in accordance with the provisions of this Code, criminal and other laws of the Republic of Azerbaijan, as well as international treaties which the Republic of Azerbaijan has joined” (Article 521). The Criminal Procedure Code of the Republic of Azerbaijan (2020) does not address the issue of the transfer of convicted persons.

A. Volevodz (2015) shares 5 main types of international cooperation in the field of criminal procedure. One of them is “the execution of sentences and other decisions of foreign and international criminal courts in criminal cases, including the transfer of a person to the state of which he is a citizen, as well as the transfer of persons suffering from mental disorders for compulsory treatment”. In this direction, A. Volewodz (2015) rightly notes that the execution of

sentences and other decisions of foreign states and international criminal courts in criminal cases, including the transfer of a person to the state of which he is a citizen, as well as the transfer of persons suffering from mental disorders for compulsory treatment, etc., is one of the areas of international cooperation, i.e. they have the same roots and goals.

The most curious legal regulations for the transfer of persons can be found in the Criminal Procedure Code of the Republic of Kazakhstan (2020). Chapter 62 of the Code of Criminal Procedure of Kazakhstan "Recognition and Execution of Sentences and Orders of Courts of Foreign States" regulates the following issues: sentences and orders of courts of foreign countries, recognised in the Republic of Kazakhstan (Article 601); the grounds for transferring convicts to imprisonment to serve their sentences or transferring persons suffering from mental disorders for compulsory treatment in the state of which they are citizens (Article 602); conditions for the transfer of a convict or a person to whom compulsory measures of a medical nature have been applied (Article 603), etc. The above examples indicate that the Code of Criminal Procedure of Kazakhstan considers the transfer of convicts or persons suffering from mental disorders to be an integral part of "the recognition and enforcement of sentences and decisions of foreign courts".

In the authors' opinion, the transfer of convicted persons is not part of the execution of sentences by foreign courts, since the execution of sentences by foreign courts is one of the mechanisms for transferring persons. The recognition and execution of a sentence as a goal, and the transfer of convicts as an integral part of it, were initially used in practice at the international level. For example, the European Convention on the International Validity of Criminal Judgments was adopted on May 28, 1970 and provided for the transfer of convicts, but in general it was not recognised by the international community and could not serve as an example for it (European Convention on the International... 1974). It is well known that, according to international treaties on this issue, the single value of the modern world community lies, by name, in "transferring persons sentenced to deprivation of liberty" or sometimes with additions – "to serve the sentence", "in the state of which they are citizens".

History and scientific publications do not allow identifying a single approach to the issue of transferring persons convicted to serve their sentences. In

international and national legal acts, the definition of the concept of transfer of persons sentenced to imprisonment is given "carefully" in most cases: international treaties on the transfer of convicted persons and the national criminal procedure legislation of post-Soviet countries do not define the concept of transfer of convicted persons. It is possible to give examples of the existing concepts of the transfer of persons in the national criminal procedure legislation of the post-Soviet countries. The new Criminal Procedure Code of the Kyrgyz Republic (2017) dated February 2, in art. 5 "The definition of the basic concepts contained in this Code" provides the following concepts of the transfer of convicted persons: "transfer of a person sentenced to deprivation of liberty" is the transfer of a person convicted by a court of one state for further serving a sentence to another state of which he is a citizen or permanently resides on its territory" (p. 23). In the Criminal Procedure Code of the Kyrgyz Republic (2017), the concept of "transfer of a person sentenced to deprivation of liberty" includes a list of basic concepts that can be welcomed. From the content of paragraph 23 of Art. 5 of the Criminal Procedure Code of Kyrgyzstan, it can be concluded that the transfer of a person sentenced to imprisonment is: the transfer of a person; a state convicted by a court; for further serving the sentence; to a foreign state; a citizen of which he is or permanently resides in the territory of a foreign state.

Most scientific research lacks the author's concept. In the scientific literature, of interest are the conclusions of some researchers who gave the concept of the transfer of convicted persons in one form or another. V. Samarin (2011) notes that "the transfer of a convicted person to serve a sentence in a country of his citizenship is a type of international legal assistance in criminal cases, in which a person sentenced to deprivation of liberty in one state is transferred based on a petition to the state of his citizenship for further execution of the sentence imposed on him, recognised by a country his citizenship". The concept that V. Samarin proposes in one form or another is associated with the legislation of Belarus, which understands "international legal assistance in criminal matters" in a broad sense as the concept of international cooperation in criminal matters and as a legacy of Soviet times. Other post-Soviet countries, at least in their national legislation, abandoned this practice. And the concept is limited only in name.

This approach related to legislation can be found in the works of L. Santashova (2017). In her opinion, "the

transfer of persons sentenced to imprisonment to serve their sentences in the states of their citizenship is an independent area of international cooperation in the field of criminal proceedings, within which, at the stage of execution of a sentence, the submission of the federal executive body authorised in the field of execution of sentences is considered, or the competent authorities of a foreign state or the appeal of the convicted person or his representative to serve the sentence in the state of citizenship for the purpose of social rehabilitation". Compared with the concepts given by V. Samarin and L. Santashova, the transfer of convicts is an independent area of international cooperation in the field of criminal justice, which is important. L. Santashova does not write about the transfer of convicts as an institution. As for the subjects in some post-Soviet countries, the issue of transfer of persons is represented by "the federal executive body authorised in the field of the execution of sentences".

D. Shurukhnova (2006) notes that "the transfer of a convicted person is an act of international cooperation carried out on the basis of international and domestic legislation, consisting in the transfer of a person who has committed a crime and has been convicted by one state to another state of which the convicted person is a citizen, for the execution of a sentence in form of deprivation of liberty". D. Shurukhnova (2006) gives the concept of "transfer of a convicted person", but means the transfer of convicted persons for further serving a sentence in the form of imprisonment in the state of his citizenship – "this is a humane act that must be developed for the effective implementation of the correction of convicts, the protection of their rights, freedoms and legal interests, rendering assistance to convicts in social adaptation. The persons to be transferred have a special legal status determined by the fact that they are foreign citizens or stateless persons and have been sentenced to imprisonment".

According to E. Feoktistov (2010), "the transfer of a convicted person to serve his sentence to the state of citizenship is, on the one hand, a voluntary act of the transferring state, based on the principle of citizenship and an effective court decision adopted in accordance with international treaties, and on the other, voluntary recognition and execution by the state receiving a convicted person of a sentence of a foreign criminal court in maximum compliance with regard to the type, measure, procedure and conditions for serving the sentence determined to the transferred person". The appearance in the concept of the categories "act", "humanity" can most often be attributed to K. Kolibab

(1999). He writes: "The transfer of a convicted person is an act of humanity on the part of a state, a court of which passed a sentence. This act is designed to increase the efficiency of the execution of punishment thanks to its environment ... and as a result of this reduction of restrictions on the rights of a convict". According to A. Shatalov and L. Santashova (2018), "the transfer of convicts is an independent area of international cooperation in the field of criminal proceedings, within the framework of which, at the stage of execution of the sentence, convicted persons are transferred for further serving their sentences to the state of their citizenship or permanent residence for the purpose of social rehabilitation".

This type of international cooperation is based on the act of goodwill of the respective state, pursuing the most humane goals for the best adaptation of the convicted person at home (Bykova 2006). Thus, the following types of transfer of persons sentenced to imprisonment to serve their sentence, currently available in international and national regulatory legal acts and scientific literature, can be distinguished: transfer of persons sentenced to deprivation of liberty to serve their sentence in the state of which they are citizens; transfer of persons sentenced to deprivation of liberty for serving a sentence to a state in which he has permanent residence – this is possible in relation to stateless persons and persons with more than one citizenship; transfer of persons sentenced to deprivation of liberty by an international judicial body to serve their sentence in the state. Thus, international cooperation in the transfer of a person sentenced to deprivation of liberty for serving the sentence is carried out based on international and national regulatory legal acts, the interaction of the competent authorities of one state or international judicial bodies with the aim of the best correction within the framework of the execution of the sentence that they imposed during displacement of a person to the territory of another state.

The Transfer of Persons within the Framework of International Cooperation is Called an Institution

A. Krupstov *et al.* (2011), in a separate paragraph of their work on "the transfer of a person sentenced to imprisonment for serving in the state of which he is a citizen", note that "the institution of transfer of persons is significantly different from the institution of extradition". In their opinion, the transfer of persons is an institution. Further, they do not substantiate the grounds for this position. Then they write about "the transfer of a person sentenced to deprivation of liberty

for serving in the state of which he is a citizen". E. Bykova (2007) notes that "based on the realities of today, it can be suggested that the institution of transferring convicts will be applied more broadly, which will inevitably lead to its improvement". According to E. Bykova (2007), "the transfer of convicts" is an institution of law and its legal basis "are international multilateral and bilateral treaties and agreements, conventions to which both parties to the transfer have joined, including agreements on the principle of reciprocity, national constitutions, special legislation (Criminal Procedure Code of the Russian Federation, RF Criminal Code, RF PEC)".

I. Leshukova (2013), a Ukrainian researcher, notes that "an attempt to create at the level of national legislation another comprehensive legal institution – the recognition and enforcement of sentences of foreign courts and the transfer of convicts should be noted as a positive moment". The idea of I. Leshukova lies in the norms of the Criminal Procedure Code of Ukraine. In her opinion, the recognition and enforcement of sentences of foreign courts and the transfer of convicts together form a complex legal institution. According to A. Krymov (2014), "the institution of transferring a person sentenced to imprisonment to serve a sentence in the state of citizenship as an institution adjacent to extradition also has an inter-branch legal nature. The institution of transfer is governed by the norms of various branches of law: international law, constitutional and criminal procedure. It seems expedient to include the norms of the Penal Executive Code (PEC) of the Russian Federation in this list". And if A. Krymov recognises "the transfer of a person sentenced to imprisonment to serve a sentence in a state of citizenship" as an institution, then L. Santashova (2017) adds that "the institution of the transfer of convicts and the institution of the transfer of persons suffering from mental disorders are completely different institutions of criminal procedure law, not formally related to each other". L. Evsicheva (2013) has the same opinion: "the institution of transferring persons suffering from a mental disorder for compulsory treatment is a new legal institution that is not formally associated with the institution of transferring convicts". These statements are based on the existing legal regulations of the Russian Federation. A simple question: if "the transfer of a person sentenced to deprivation of liberty to serve a sentence in the state of citizenship" is an institution, then "the transfer of a person sentenced to imprisonment to serve a sentence in the state of their

permanent residence" should be regulated separately from it?

The transfer of convicts and the transfer of persons with mental disorders for compulsory treatment are the types, not institutions, most often close to each other. As an argument, one can name the legislative practice of Kazakhstan, which regulates these types together. In addition, in accordance with Part 2 of Art. 605 of the Criminal Procedure Code of Ukraine "the provisions of Articles 605-612 of this Code can be applied when deciding on the transfer of a person to whom the court has applied compulsory medical measures". In essence, according to Part 2 of Art. 605 of the Criminal Procedure Code of Ukraine (2020), the norms on the transfer of convicted persons and their acceptance for serving a sentence can be applied when transferring a person for compulsory medical measures. As noted by N. Ostroukhov and Yu. Romashev (2013), "the institution of the "transfer" of a person in the interests of the implementation of criminal justice is very multifaceted". That is, any type of transfer of a person within the framework of a criminal procedure constitutes a single institution called "transfer of persons".

For example, the Code of Criminal Procedure of Latvia dated May 11, 2015 in sect. 16 "Acceptance of a convicted person for serving a sentence" separates two issues "accepting a person convicted in a foreign state to serve a sentence in Latvia" (Chapter 69). The transfer of a person convicted in Latvia to serve a sentence in a foreign state (Chapter 70) and the section "Recognition and Execution of a Criminal Sentence of Another State" provide for the provisions on "the execution in Latvia of a sentence sentenced in a foreign state" (Chapter 71) and "Execution in a foreign state of the penalty imposed in Latvia". The Latvian Criminal Procedure Code (2005) quite fully regulates these issues. But this does not mean that each of the named issues is a separate institution. It is well known that the transfer of convicted persons and the acceptance of persons in the Criminal Procedure Code of Latvia within the framework of the acceptance of a convicted person for serving a sentence regulates the acceptance and transfer of persons.

CONCLUSIONS

As can be seen, the scientific literature has not yet developed a unified approach to determining one or more other types of transfer of persons as an institution. It should be noted that most often

researchers base their point of view on this issue in accordance with the existing legal framework of their country. But, in the authors' opinion, such an approach further complicates the legal regulation and forecast of the development of the transfer of persons in the framework of international cooperation in the field of criminal proceedings. International treaties are concluded in certain circumstances or the norms of national legislation have their own peculiarities on this issue to be treated "carefully". The transfer of a person during a criminal procedure constitutes a single institution called "transfer of persons".

There are many problems in the post-Soviet countries – from the conclusion of international treaties and the regulation of these issues in national legislation to the implementation of norms in this direction. It is advisable to conclude new international treaties and use legislation in a comparative sense and improve law enforcement practice in the post-Soviet space.

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Received on 20-11-2020

Accepted on 18-12-2020

Published on 31-12-2020

DOI: <https://doi.org/10.6000/1929-4409.2020.09.380>

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