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LEGAL SIGNIFICANCE OF THE INSTITUTION OF CRIMINAL RECORDS IN PROTECTING HUMAN RIGHTS

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Abstract. *This article presents a comparative legal analysis of the consequences of a criminal record and examines their criminal-law and general legal implications from the perspective of human rights and freedoms. It is proposed that criminal-law consequences should include substantive criminal-law, criminal-procedural, and penal-enforcement consequences. General legal consequences are defined as legal effects associated with restrictions on an individual's rights and freedoms in the fields of constitutional, civil, labour, family, and other branches of law. It is substantiated that general legal consequences differ from criminal-law consequences in that they are reflected not in criminal, criminal-procedural, or penal-enforcement legislation, but in other sector-specific legislative acts regulating human rights and freedoms. It is also recognized that the consequences of a criminal record may continue after the record has been expunged or set aside and, in certain cases, may have legal effects not only on the convicted person but also on close relatives or other persons.*

Keywords. *criminal record; consequences of a criminal record; criminal-law consequences; general legal consequences; legal restrictions; rights and freedoms.*

The adverse consequences of a criminal record that negatively affect the lives of former convicts and restrict human rights and freedoms beyond the scope of legal consequences established by a court judgment have become the subject of scientific research by numerous scholars and practitioners, including sociologists, legal scholars, medical professionals, social-sector specialists, and others. Persons with criminal records face long-term, and in some cases lifelong, difficulties in exercising their labour rights and obtaining employment in the labour market. Moreover, because society may perceive them as socially dangerous persons, they may be forced to live under the risk of deprivation and hardship; most importantly, their rights and freedoms may be artificially restricted.

In this regard, an in-depth study of this problem is of great importance from the perspectives of the administration of justice and human rights. On the one hand, it is necessary to ensure the resocialization of persons who have previously been convicted, their full integration into society, the restoration of their restricted rights, and the creation of conditions for their equal access to social benefits. On the other hand, the task of effectively protecting society from the risk of repeat offending (recidivism) is also of particular importance.

In the theory of criminal law of the Republic of Uzbekistan, the institution of criminal records is considered one of the most complex and controversial institutions from both theoretical and practical perspectives. To date, legislation has not established a formal definition of a criminal record, no unified approach has been developed regarding its place within the system of legal institutions,

and certain characteristics of this institution require additional scholarly analysis.

There are numerous scholarly approaches in criminal-law theory aimed at classifying the consequences that characterize the legal nature of a criminal record. Most scholars of both the contemporary and Soviet periods divide the consequences of a criminal record into two principal groups: criminal-law consequences and general legal consequences. These scholars include V.N. Kudryavtsev, G.A. Krieger, G.N. Borzenkov, A.V. Brilliantov, D.I. Aminov, and others [1; 2; 3; 4]. Some scholars additionally identify penal-enforcement or administrative-law consequences as independent groups, including A.Ya. Grishko, A.M. Potapov, N.A. Belyaev, and M.I. Kovalev [5; 6; 7].

According to a number of the researchers mentioned above, it is appropriate to include substantive criminal-law, criminal-procedural, and penal-enforcement consequences within the category of criminal-law consequences. Although these consequences are closely connected with different stages of criminal proceedings, they possess independent characteristics in terms of their subject matter of legal regulation and their affiliation with a particular branch of law.

The second group of scholars distinguishes other legal consequences of a criminal record and recognizes them as constituting a group of general legal consequences. In academic literature, they are sometimes also described as "criminological consequences" or "non-criminal-law consequences." In this regard, the views expressed by researchers in recent years are of particular scholarly interest. In particular, G.Kh. Shautaeva notes: "A criminal record is an accusation of a person who has committed a crime, taking the form of a legal fact of a temporary nature; it is reflected in the conviction of the court that imposed the punishment, which has entered into legal force, and this gives rise to specific criminal-law and general legal consequences for the convicted person" [8].

This view is also supported by a number of Uzbek scholars. In particular, in the Criminal Law textbook of the Academy of the Ministry of Internal Affairs of the Republic of Uzbekistan, R. Kabulov and F. Yakubov state with regard to criminal-record status: "A person is considered to have a criminal record from the moment the court's conviction, by which that person was sentenced to a specific punishment for committing a crime, enters into legal force. Thus, a person is considered to have a criminal record both during the period of serving the sentence and for a clearly defined period after having served it. However, a person who has been released from punishment by a court judgment is not considered to have a criminal record" [9].

In our view, the principal shortcoming of the above definition is that it does not fully reflect the rules concerning the general legal consequences of a criminal record. It merely indicates the existence of legal consequences to which a person is subject during the period of the criminal record. However, it is known that, from the standpoint of ensuring certain human rights, the fact of a person's criminal record may continue to be reflected in adverse general legal restrictions even after the period of the criminal record has expired, including after the record has been removed or expunged ahead of schedule.

According to researcher L.V. Semina: "A criminal record serves as a specific legal warning to a convicted person aimed at preventing the commission of a new crime. This warning retains its legal force until the

circumstances that served as the basis for considering the convicted person dangerous to society have been eliminated. At the same time, a conviction imposing punishment means that the court considered it necessary to apply the effect of punishment to the convicted person. Execution of such punishment entails appropriate state and public supervision over the convict's conduct. Therefore, a criminal record requires society to exercise supervision over the conduct of the convicted person" [10].

In our opinion, the most appropriate definition of the concept of a "criminal record" is provided in the scholarly work of Belarusian scholar V.V. Marchuk. He states: "A criminal record is a temporary special legal status of a person that arises from the day a conviction for a crime enters into legal force as a result of the person being convicted by a court, continues until the expiry of a certain period established by law, and may also be regarded as a legal status confirming the existence of adverse criminal-law and general legal consequences for the person with a criminal record" [11].

Thus, based on an analysis of the definition given by V.V. Marchuk, the following specific characteristics of a criminal record can be identified:

— a criminal record is temporary in nature; it arises from the day a conviction enters into legal force and continues for a certain period established by law;

— a criminal record determines a person's special legal status, meaning that it produces adverse consequences for the convicted person in both criminal-law and general legal terms;

— a criminal record arises only as a result of a person being convicted by a court for a crime committed by that person.

The views of the above-mentioned researchers characterize a criminal record in terms of its impact on a person's constitutional rights and freedoms and on rights and freedoms in the civil, labour, family, and other branches of law. Therefore, the institution of criminal records may also be considered, in this sense, an intersectoral legal institution.

General legal consequences are distinguished by the following characteristics:

— they are established not by criminal, criminal-procedural, or penal-enforcement legislation, but by other legislative acts;

— their legal significance may remain even after the criminal record has expired or been removed;

— they may have legal effects not only on the person with a criminal record but, where provided by legislation, also on close relatives of that person or on legal entities.

The emergence of general legal consequences is not absolute in nature. As a rule, their application depends on the existence of specific legal facts established by legislation. Such conditions include the category and type of crime, the elements of the offence, the form of guilt, the form of plurality of offences, the place where the crime was committed, and the type of punishment imposed.

When classifying general legal consequences, the following criteria may serve as the basis: their duration and territorial scope; the subjects of legal restrictions; the degree of mandatory legal impact; the scope of restrictions concerning human rights; the legal force of the legal basis; their affiliation with a branch of law; their legal construction; and their sphere of application.

According to duration, general legal consequences may be divided into temporary, indefinite, and permanent types. In terms of territorial application, they may apply throughout the territory of the state or within a

specific part thereof. According to the subject of legal restrictions, they may be divided into primary and additional subjects. The primary subject is a natural person who has or previously had a criminal record. In certain cases, other persons who are in legal relations with a person with a criminal record may also appear as additional subjects.

According to the degree of mandatory force, the consequences of a criminal record may have imperative or dispositive characteristics. In terms of their affiliation with a branch of law, they may be divided into consequences associated with restrictions on rights and freedoms in constitutional, civil, labour, family, and other branches of law.

According to their legal construction, general legal consequences may be divided into simple and complex types. Simple consequences are generally associated with the fact of a criminal record itself or with the existence of one additional legal circumstance. Complex consequences, in addition to the criminal record, require the existence of additional legal circumstances such as the category of the crime, the form of guilt, or the type of crime.

According to their sphere of application, general legal consequences may be divided into those associated with restrictions on personal, political, social, economic, and cultural rights.

Thus, it is appropriate to include criminal-law, criminal-procedural, and penal-enforcement consequences within the criminal-law consequences of a criminal record. Although they are connected with different stages of criminal proceedings, they possess independent significance in terms of their legal nature and sectoral affiliation.

General legal consequences, in turn, are legal consequences associated with restrictions on a person's personal, political, socio-economic, and cultural rights, as well as restrictions on their social activity and opportunities to participate in the life of society. Unlike criminal-law consequences, they are regulated by legislative acts belonging to other legal sectors, may continue to apply after a criminal record has expired or been removed, and in certain cases may have legal effects on other subjects as well.

The legal consequences of a criminal record and their relationship with human rights and freedoms are also confirmed by researchers in a number of foreign countries. In particular, according to contemporary English researcher Andrew Henley, because the practice of checking an individual's criminal history has become widespread and persistent concerns remain regarding the risk of future offending, many people who have completed their sentences within the criminal justice system experience a "non-superior status." As a result, they are subjected to unfair discrimination and, in practice, may find themselves in a condition of "social death" [12].

It is considered that the United Kingdom has certain legal mechanisms aimed at protecting former offenders from discrimination. In particular, the Rehabilitation of Offenders Act adopted in 1974 establishes the concept of a "rehabilitation period." After this period expires, a person is generally no longer required to disclose information about their criminal record because such a record is considered "spent," meaning that it has lost its legal effect. Under the Legal Aid, Sentencing and Punishment of Offenders Act adopted in 2012, persons sentenced to imprisonment for more than four years cannot be rehabilitated

under the law (section 5). The Offender Rehabilitation Act of 2014, adopted with the aim of reducing the number of repeat offences, further tightened the legal framework operating in this field [13].

According to Professor Henley, the increasing practice of checking criminal records is leading to a significant decentralization of the state's powers concerning the imposition of punishment. This means that, in practice, these powers are being transferred to employers, insurance organizations, housing services, and other actors. As a result, such actors acquire the ability to "punish" former offenders in their own way by depriving them of social, economic, and other rights [14].

It should be noted that the provisions of the above-mentioned laws have repeatedly given rise to disputes before courts in the United Kingdom and also before the European Court of Human Rights. By a majority, the European Court found the relevant restriction incompatible with the "right to free elections" provided for in Article 3 of Protocol No. 1 to the European Convention on Human Rights and Fundamental Freedoms. Nevertheless, this prohibition remains in force to the present day [14].

In the United States, the history of establishing lifetime registries for persons who have committed sexual or violent offences is primarily associated with the adoption of four federal laws enacted in memory of victims of crime and named after them. These laws imposed an obligation on states to introduce registration programmes for persons who had committed sexual offences. The programmes enabled local law-enforcement agencies to obtain information about where such persons lived. The laws also introduced systems for notifying the public that such offenders resided in a particular neighbourhood or community [15].

Subsequently, additional laws regulating this area were adopted in certain states. For example, the "Megan's Law Sex Offender Internet Registry," adopted in the State of New Jersey in 2001, provides for maintaining an internet registry of persons who have committed sexual offences. Under this law, detailed information about such persons is published on the Internet [16].

The comparative legal analysis presented above demonstrates that, although approaches to the concept of a criminal record and the differentiation of its legal consequences have specific characteristics in each national legal system, certain typological similarities also exist among them. Under the influence of the global threat of transnational crime, an increasing number of foreign states are introducing into legal practice the approach of establishing long-term, and in some cases lifelong, legal consequences of criminal records for certain types of offences.

The foreign experiences discussed above, together with the analysis of new trends in the criminal policies of certain foreign states undertaken in this comparative legal study, demonstrate that today a complete abandonment of the institution of criminal records and their legal consequences may be regarded as a kind of "aesthetic protest" of law against society. The criminal policies of contemporary foreign states do not reflect a trend toward reducing or liberalizing the social stigmatization of convicts or granting them a number of additional rights and freedoms. On the contrary, in relation to crimes of an international nature, particularly corruption, extremist, and terrorist offences,

modernization of criminal legislation is being carried out not with the aim of improving the legal status of convicts, but within a trend of "over-criminalization." This is manifested in the strengthening of special rules providing for liability for such acts, as well as in the reinforcement of their general legal consequences.

At the same time, the legal consequences of a criminal record continue to be interpreted in connection with the presumption of the social dangerousness of the convicted person, the prejudicial significance of criminal-law consequences, and the social and legal "stigmatization" of a person even after the criminal record has expired or been removed, including through restrictions on the provision of basic human rights and freedoms.

Since contemporary legislation covers a broad range of relations associated with restrictions on human rights and freedoms, one of the urgent tasks in the field of regulating the consequences of criminal records is to systematize and unify legislation and to ensure coordination among normative legal acts of different levels.

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