

American University of Central Asia
“International and Business Law” Department

**“Property rights of convicted persons
sentenced to imprisonment in the Kyrgyz
Republic”**

SENIOR THESIS

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Introduction

Significance of the research. In the civil law of the Kyrgyz Republic the variety of subjects of the property relations, their kinds, legal status, social status and other characteristics involves a different set of rights, obligations and conditions for their implementation. Legislation directly or indirectly sets unequal conditions for participation in the property relations for the various categories of individuals whose legal status differs from the civil one. This paper will focus on the specific categories of citizens of the Kyrgyz Republic, who have been convicted by the court for committing criminal offenses, for which the law in accordance with Article 57 of the Civil Code of the Kyrgyz Republic (hereinafter – Civil Code of the KR) has set additional restrictions or other order of acquisition implementation and termination of the right of ownership and other property rights or given additional guarantees of these rights.

Imprisonment as a form of criminal punishment has the greatest impact on the set of the rights and obligations of the condemned under the civil law, which is primarily due to establishment of regime requirements against such persons. I believe that being under the democratic transformation the state should establish for these individuals a system of restrictions of rights and assigning them specific duties, which would be consistent with generally accepted human rights principles and norms of the International law, Constitution and laws of the Kyrgyz Republic as well as contribute to the goals of punishment. The selection of this topic for a diploma is due to the exceptional importance of civil matters in the society especially in today's evolving market economy of Kyrgyzstan and the increasing attention of social scientists to the issues related to the property rights of citizens.

The object of the study are the civil matters arising out of the acquisition, termination and implementation of the property rights of persons sentenced to deprivation of freedom.

The objective of the research is comprehensive study of the main elements of the property status of the condemned to deprivation of freedom definition and scope of the property

rights of these citizens. In order to achieve these objectives of the study the following **issue** is will be explored:

Whether there are any legislative limitations on property rights of the persons sentenced to imprisonment under Kyrgyz laws, which hinder their effective exercise in practice?

The methodological bases of the study are common and private scientific methods used in the study and analysis of the civil law. The main methods used in the work will be: dialectical, logical, systematic, comparative law and historical. Methods of analysis and synthesis, statistical and sociological and method of interviewing will be widely used.

Chapter I. Concept and content of the property rights of persons sentenced to deprivation of freedom in Kyrgyzstan

§ 1. Civil status of the persons sentenced to deprivation of freedom as subjects of the property rights in the KR

The issues the legal status of the persons sentenced to deprivation of freedom in the Kyrgyz Republic are highlighted by the educational and scientific literature, mainly from the point of view of criminal and penal execution relations. Exercise of civil rights by this category of citizens is either not regulated at all or considered only in the most general terms, thus creating some difficulties in law enforcement. However, deprivation of freedom as a form of criminal punishment has the greatest impact on the set of the rights and obligations of the condemned under the civil law, which is, above all, related to establishment of regime requirements to such persons. At the same time, the necessary conditions for effective reforms and rehabilitation should be provided to guarantee efficient civil rights implementation and liberties of prisoners as full participants under the civil law.

According to the Article 20 of Constitution of the Kyrgyz Republic¹ legal effect on a person depending on his behavior can be expressed as restriction or extension or elimination of rights and responsibilities socially significant for the individual. However, the legal "Status of a person and citizen" is fully characterized by a set of rights and duties conferred upon him as the subject of legal relations arising in operation of all branches of the law"². It should be noted that every person possesses the rights and responsibilities. However, at certain times of life people have different functions due to their age, school or work, social status, real-life situations and other circumstances. In this sense, their legal status should be distinguished, which are expressed in limiting their rights and obligations as citizens of the state and vesting them with specific

¹ Constitution of the Kyrgyz Republic on 27.06.2010, //Newspaper Erkintoo. 2010. July 2.

² Kozlova K.I., Kutafin O.K. The constitutional right of Russia. M., 1998. C. 154.

rights and duties, according to their imposed penal measures for the period of execution. As far as the legal status of an individual is an independent socio-political value, the answer to "arising issue about admissibility and forms of expression of the state coercion, including criminal penalties can be resolved within the framework of consideration of the problem of the legal status of the condemned"³.

Legal doctrine distinguishes three types of legal status of an individual: general legal status of citizens, special legal status of certain category of citizens and legal status of the individual citizen. The legal status of the condemned is a kind of a special legal status of the individual, which includes individual legal status of a specific condemned. However, "from the point of view of law-specifically legal status of condemned - neither more nor less than a kind of special legal status which is based on a stable social role important for society being regulated by norms of different areas of law. By its content the legal status of condemned - the combination of rights, obligations and interests by the legal application – the stage of development of the legal status of citizens carried out by limitation, specification and amendment"⁴. Given all of the above features of the legal status of the condemned, as well as taking into account the possibility of changing the legal status of the condemned person during his sentence, it is possible to note definition of professor in the sphere of property law T.F. Minyazeva according to which "The legal status of the condemned should be understood as based on the general status of citizens of the State and combination of their rights and duties fixed in the laws and regulations of various branches of the law depending on their sentence assigned by the court action under the criminal law and their behavior during implementation"⁵. In my view this definition reflects the main

³ Seliverstov VI The theoretical problem of the legal status of inmates. M., 1992. C8.

⁴ Mamazhanov K.S. Participation in public circulation of persons sentenced to imprisonment in the Kyrgyz Republic. Monograph. Bishkek, 2012. C. 38.

⁵ Minyazeva T.F. The legal status of a person convicted in the Russian Federation - M.,2001. C. 44.

features of the phenomenon. However, one can note the fact that along with the rights and obligations of the condemned the legal status of the condemned differs by the presence of specific guarantees of their implementation, not relevant to other citizens.

It should also be noted that Article 16 of Constitution of the Kyrgyz Republic establishes an important rule that "Every citizen of Kyrgyzstan on its territory possesses all the rights and freedoms and bears the equal obligations under the Constitution". This provision is complemented with paragraph 3, article 6, which proclaims equality of all before the law and the courts. These standards are of course also apply to the persons sentenced to deprivation of liberty as they remain to be citizens of the Kyrgyz Republic with all rights and responsibilities with restrictions provided by the law. Part 2 of Article 20 of the Constitution of the Kyrgyz Republic provides that such restrictions may be established only by the law and only for protection of the constitutional system basis, morality, health, rights and lawful interests of other persons, national defense and security of the state. Thus, the constitutional provisions fixing the rights and freedoms of the man and citizen are the basis of a civil status of the condemned sentenced to deprivation of freedom and, also contain guarantees of protection against undue prejudice to the rights of these citizens.

The state policy on determination of the legal status of the condemned is being developed to establish the maximum possible direct restrictions on their rights and to reduce the number of circumstantial or indirect restrictions. Under the indirect constraints they understand the limitations not mentioned directly in a regulation but arising from the content of punishment. For example, staying in the penal colony the condemned cannot fully implement the obligation to raise children, maintain family relationships using a motor vehicle owned by him and others though nobody has deprived him of those rights and obligations. The condemned to correctional labor is indirectly restricted to the right to change job. It should be noted that despite aspiration of modern penal and other legislation to establish predominantly direct restrictions of the

condemned to their rights it is not possible to foresee all specific situations that cause the need for this or that limitation. On the other hand, indirect restrictions follow from the elementary logic. The Civil Code of the Kyrgyz Republic reproduces the provisions of the Constitution of the Kyrgyz Republic on inadmissibility of restrictions of civil rights except as provided by the law and only to the extent that is required for protection of the constitutional order, morality, health, rights and lawful interests of other persons, national defense and security of the State (Chapter 1, Art. 57 Civil Code of the KR)⁶.

However, the civil law governs the basis of the property status of the condemned sentenced to deprivation of freedom. Based on that one can make a conclusion that the property status of the persons sentenced to deprivation of freedom is similar to the general civil status with exceptions and limitations provided by the penal legislation. And the norms of the latter in relation to the norms of the civil law are special and applied, if there is a conflict with the general rules of civil law. Restrictions on the legal status of the condemned relate to all spheres of their life, including the scope of the property relations. In particular, the sentence of imprisonment significantly reduces the possibility of the condemned to own actually, to use and, in some cases, to dispose of his property. This is an inevitable consequence of the physical isolation of the person from the society, and the need to follow to execution of the penalty in the penal institution. Under execution of sentence it should be understood the procedure of execution of public enforcement measures, regulated by the rules of criminal law, expressed in the complex of restrictions on the rights and freedoms of the condemned person. An important component of the legal status of the persons, serving deprivation of freedom, giving the special nature to their status, are the special rights of the condemned. The special subjective rights of the condemned

⁶ The Civil Code of the Kyrgyz Republic on 08.05.1996, and on 05.01.1998, // *Erkintoo*. 1997. № 84; 1998. № 16.

are subject to the following characteristics: first, those rights, which have no counterpart in the civil status. Therefore, they are of an independent nature and do not overlap with the overall status of the rights of citizens of the Kyrgyz Republic, and do not specify them. Second, the content of special rights does not depend on the constitutional and branch laws rights of citizens. Changing of their content does not involve the conversion of the rights of the Kyrgyz Republic citizens and vice versa. Third, the media (subjects) of the special rights can only be the condemned serving urgent criminal penalties. Fourth, special rights provide execution of correction impact measures and simultaneously perform a positive function compensating the negative effects of punishment.

Given the above, one can determine that the subjective right of the persons, serving sentences of imprisonment – this is the secured by a legal duty of the prison administration and fixed rules of criminal law enforcement opportunity to use appropriate social benefits, meeting personal needs and interests of the condemned⁷. As noted above, limitations of the legal capacity of citizens are permitted only by the law, and due to the need to ensure the mode of execution of punishment. In this connection the law-maker deprives the condemned the opportunity to have the right to possess items, listed in the Internal Rules of Corrections Institutes. However, there is a reservation: if there is a person sentenced to deprivation of freedom, then the penal legislation limits his personal rights of ownership over the property being in prison, and the limitations on implementation of the proprietary rights in relation to the rest of the property are indirect and arise from the very fact of deprivation of liberty. For example, a person, being in prison, is not able to have and to use the money, securities, household appliances etc., but the law does not prohibit him to acquire property in ownership through an agent and then to carry out entitlement use and disposal in respect of this property⁸.

⁷ Minakov G.L. The rights and lawful interests of the persons serving sentence of imprisonment, and guarantees of their implementation. Textbook. M., 1993. C. 9.

⁸ Internal regulations of the Correctional Institutes of the Ministry of Justice of the Kyrgyz Republic: Approved by Minister Decree №164 dated 28.10.2003.

Defining the legal capacity of citizens as given by the law (Art. 56 CC KR) it does not mention the ability of citizens to exercise his civil rights and obligations through his actions available to him. This may be considered imperfection of this norm, because if a citizen can get himself the right, then one cannot deny the ability to exercise this right. The value of the named category is in the fact that the legal capacity legally ensures active participation of the individual in an economic turnover, economic life, implementation of the property rights, especially the rights of ownership and personal non-property rights. Hence, the category of legal capacity of citizens is of great value as it is a legal means of expression of freedom of "Sovereignty" of the personality in the field of property and personal non-property relations. At the same time limitation of the legal capacity does not affect the independence of the property liability of such persons: they are responsible for the obligations arising from treaties and other transactions made by them and are responsible for the damage as well.

However, the basis of the legal status of the condemned person is the legal status of the Kyrgyz Republic citizen limited by criminal, criminal enforcement and other legislation. The established restrictions are for the purposes of protecting the constitutional system, morality, health, rights and lawful interests of other persons, as well as the security of the state. Conviction of a person is a legal fact, entailing significant changes in the legal status of the individual, the amount of which depends directly on the type of criminal punishment and the behavior of the condemned person in the process of his serving. From this one can conclude that the provisions of the Civil Code of the Kyrgyz Republic on the legal capacity and active legal capacity of the citizens are applied to the condemned with features due to the degree of their isolation from the society by virtue of point 1 57 Civil Code of the KR, which states that "No one may be restricted

in standing capacity except in the cases and procedures established by the law". The important development of the property rights of the condemned, based on the provisions of the Constitution is to enhance the means for their protection and defense, which include such as the judicial protection of violated rights and appeal to international bodies for protection of human rights and freedoms. Depending on the nature of the violated right, protection may be appropriate as per criminal, administrative, civil and constitutional proceedings.

Thus, one can conclude that the civil status of persons, sentenced to deprivation of freedom in the Kyrgyz Republic is derived from the general civil status of an individual, based on the universally recognized human rights, defined by international law and the Constitution and laws of the Kyrgyz Republic. Such a legal status in public circulation is predetermined by actions of civil law in space and time, and therefore implementation by such a person of subjective rights in places of detention is dependent on the nature of these components.

§ 2. The content of the property rights of persons sentenced to deprivation of freedom in Kyrgyzstan

The civil law of the Kyrgyz Republic does not have definition of "The property right" it making difficult interpretation of many provisions. However, the term "The property rights" can be found in eleven articles of the Civil Code of the Kyrgyz Republic as well as other acts of civil, tax, customs and other branches of the law which is used in different meanings. Often one has to identify the content of these terms on the basis of the general meaning of a specific article of the Civil Code. It is obvious that the law-maker formulating the standards of Civil Code of the KR with these terms has not developed a uniform approach to definition of their content. Thus, consideration of the issue on the content of the property rights of persons sentenced to deprivation of freedom is necessary to begin by defining the context in which we will treat this phenomenon since the term "the property rights" may be used with different meanings. Therefore, in order to avoid confusion in terminology I note that with regard to persons sentenced to deprivation of freedom it is most justified to study their property rights as an integral part of the common legal status, as indicated by Associate Professor in the sphere of property law A.M. Jumagulov in his interview⁹. In this sense the property rights of the condemned are the opportunity provided by the law to be the subjects of civil legal relations related to acquisition economic use and disposal of the property. To a greater extent this issue relates to the civil capacity of the condemned as Associate Professor in the sphere of property law K.S. Mamazhanov detailed in his article that the amount of the property rights of the condemned is not different from that of ordinary citizens¹⁰. For this reason it is necessary to pay

⁹ Jumagulov AM The legal status of a person sentenced to imprisonment in the Kyrgyz Republic. Monograph. Bishkek, 2008. C. 74.

¹⁰MamazhanovK.S. Civil capacity of persons sentenced to imprisonment in the Kyrgyz Republic // Bulletin of the St. Petersburg University of the Internal Ministry of Russia. St. Petersburg, 2011. C. 43-49.

attention to the content of the property rights under another aspect namely to the subjective property rights of persons sentenced to deprivation of freedom.

The science of the civil law has many definitions of the subjective civil rights, reflecting either side of the phenomenon. The most common of them state that this type and measure of possible behavior of the authorized person is provided by the power of public enforcement. About this way we can meet definition in the works by Y.K. Tolstoy who wrote that the subjective right can be defined as a measure of possible behavior in this relationship fixed to the entitled to satisfy his interests provided by imposing duties on others¹¹ and professor in the sphere of property law C.N. Bratusya, considering the subjective right as recognized and secured by the law measure of possible behavior of a person¹². In this case the subjective right is considered as the right to their own actions, when the authorized person implements the possibility of his own positive behavior, and they call this right as the right to his own actions of the owner. From this point of view the general nature of the subjective civil rights is legally secured capacity to act on your own. The content of any legal relation is rights and responsibilities of the participants. Whether and how to implement the interests of the bearer of the subjective civil right within the legal property is directly dependent on the nature of the right. They are absolute and relative property rights. The differences between these fundamental categories appear on the stage of the subjective rights implementation. If to implement absolute property rights which include all proprietary rightist is enough just own actions of the rights bearer than implementation of the relative rights in the legal relationship of obligations it requires will and active actions of the obliged party.

Any subjective property right belongs to the subject, to which it is directed. All the various relationships, being formed in respect of the civil law, depending on the nature of these

¹¹ Civil law: in 3 vols 1 / edited by JK Tolstoy. M.: Prospect, 2009. C. 43-45.

¹²Bratus S.N. On ratio ofthe civil capacity and subjective civil rights. M., 1996. C. 33.

objects, can be divided into two categories: proprietary (if civil matters are formed on the external nature of the material object) and liability (if the subject of the property relations is the obliged party actions). Among the property rights, the first place, of course, belongs to the right of ownership providing to the holder the widest range of legal possibilities in the field of legal supremacy over the whole thing in its entirety. Then follow the rights with a limited content, giving dominion over any part or quality of things owned by the other person. The immediate object of the right can be the requirement, addressed to a certain person to have the last to take some action which is of interest for the entitled. This sort of right to claim known actions from others is called the claim rights or liability rights. The category of the property rights is not limited only to proprietary and liability rights. The property composes also so-called intangible benefits such as a unique opportunity to publish their own works reproduced picture. The authorized subject meeting his interests may require the obligated subject of certain actions or to refrain from such. Such a model is characteristic for the executor-legal nature relationships. In the proprietary relations, the property rights are fixing a certain amount of authority of the holder in relation to the thing. It should be pointed out that the property right mediates the possibility of the impact on the thing (or other material objects). Emergence and exercise of civil rights and obligations take place in the process of activity which has always been focused on the existing material and ideal benefits or their creation. That is why, in our opinion, in the category of civil law the property rights category is covered by the concept of property as mentioned even in the Roman law¹³.

The above theoretical principles are fully applicable to the property rights of persons sentenced to deprivation of freedom. Having the same structure as the rights of all citizens the range of the property rights of prisoners is much narrower by volume. This is explained by the

¹³Dormidontov G.F The system of Roman law. The general part. Kazan, 1910. C. 21.

fact that those sentenced to deprivation of freedom remaining subjects of civil law fall within the scope of penal legislation which establishes a number of restrictions on property relations. These restrictions are stipulated by the need to respect the conditions of the penalty of imprisonment involving isolation of the criminal from the society. Requirements of the regime of punishment relate more to the basic property right of the individual - the right of ownership. In particular the condemned are banned to acquire to produce to store and to use things provided by the Rules of Procedure of Correction Institutes. In addition, there are number of limitations that affect all proprietary rights (such as ban on alienation of things belonging to the condemned). However, this does not mean that the condemned are deprived the subjective property rights. In this case it is only their time constraints, as formally the condemned are not deprived of any property rights or other proprietary rights. These examples show that the narrowing of the scope of the property rights of the condemned is due to limitation of the proprietary rights. At the same time those sentenced to deprivation of freedom stay plenipotentiary subjects of liability rights and copyrights. As previously noted the Constitution of the Kyrgyz Republic establishes an important rule that every citizen of the Kyrgyz Republic has on its territory all the rights and freedoms and bears the same obligations under the Constitution of the Kyrgyz Republic. These standards are of course; also apply to persons sentenced to deprivation of freedom, as they continue to be citizens of the Kyrgyz Republic with all rights and responsibilities with exceptions and limitations provided by the federal law. Thus, the legislator should take into account the opinions expressed in the science about the need to combine in Chapter 2 of the Penal Code of the Kyrgyz Republic all the rules, concerning the legal status of the condemned that are kept in different branches of the Kyrgyz legislation. Much of this concerns the property rights of the condemned as Article 9 PC KR regulates the rights of the condemned solely as agents of the penal and legal relations and does not contain rules, defining the boundaries of the civil legal capacity of the condemned. This measure would facilitate to improve the educational effect correct understanding of their rights and responsibilities by the condemned prevention of

arbitrary application of the law unjustified violation of rights and imposing unnecessary duties, and the unity of law enforcement and, as a consequence increase the level of legal protection of persons sentenced to deprivation of freedom in the property relations.

Based on the above one can conclude that the subjective right of property of the condemned can be defined as fixed by the law and the opportunity guaranteed by the state of certain behavior in property relations use of social benefits provided by the legal duties of officers of agencies and bodies executing punishment other subjects of civil and criminal executive relationship. The above theoretical principles are fully applicable to the property rights of persons sentenced to deprivation of freedom. Having the same structure as the rights of all citizens the range of the property rights of the condemned is much narrower by volume. This is explained by the fact that those sentenced to deprivation of freedom remaining subjects of the civil law fall within the scope of penal legislation, which establishes a number of restrictions on property relations. These restrictions are due to the need to respect the conditions of the penalty of imprisonment involving criminal isolation from the society. The requirements of the penalty regime relate more to the basic property rights of the individual – the rights of ownership.

Chapter II. The acquisition, implementation and termination of certain property rights of persons sentenced to imprisonment in the Kyrgyz Republic

§ 1. The ownership rights of persons sentenced to deprivation of liberty

The right to property of citizens is a legal right that preserves the individual ownership of material wealth. Thus, citizens of the Kyrgyz Republic, with a variety of property, enter into economic, proprietary relations regarding the possession, use and disposal of the property. Over the past decades, in the context of a market economy, fundamental changes to the legislative approach has been introduced with respect to the objects that can be owned by citizens. Starting with property laws adopted by the Soviet Union, and then at the national level, legislative bodies have opted for lifting existing restrictions. At present time citizens are always encouraged exercise the right of use of private property, including citizens convicted to deprivation of liberty, for consumer and business purposes¹⁴.

The new civil legislation that regulates the set of objects, the owners of which can be citizens, contains the following basic provisions. First, citizens can own any property, except for certain types of property which, in accordance with the law, may not belong to them. Second, the quantity and value of property that can be owned by individuals are not limited, except when such restrictions are provided by law for the purposes envisaged by p. 2 article. 18 of the Constitution of the Kyrgyz Republic, p. 3. 2 and p. 2 article. 224 of the Civil Code of the Kyrgyz Republic. Subjective property rights have three functions: to possess, use and dispose of a thing. Thus it is the right of the convicted person will, depending on where the property is located outside the colony or in it. In places isolated from society, the convicted person is not deprived of the right of ownership to the property belonging to it, but it is limited in terms ownership. A person, generally, has the right to inherit and bequeath, to perform any transactions not prohibited by law, to participate in the commitments, has full rights of the author of works of

¹⁴ Civil law: textbook. H. 1. 3 ed., revised. and, third ed. A.p. Sergeev, Y.K. Leo Tolstoy. M., 1998. S. 387-388.

science, literature and art, of inventions and other results of intellectual property protected by law. However, in connection with a stay in prison the convicted person is indirectly limited in exercising the rights of successor, business activities or other deals, election of domicile, etc¹⁵.

The objects of civil rights of convicts, like all citizens, can be things such as money and securities and other property, including businesses, property complexes and other immovable property. The deprivation of liberty by itself does not terminate the right of ownership. The convict has criminal penalties, but you cannot deprive him of the necessary equipment. No one may be deprived of his property except by a court decision. According to the opinion professor F.R.Sundurova in the sphere of property law, it is possible, either in the order of forfeiture as punishment for the crime committed, or requisition for public use, but subject to the refund of the seized property¹⁶.

The convicted person as a citizen is not deprived of legal capacity and capability in the area of tenancy as a landlord. If prior to his conviction, he acted as landlord, and conditions for serving their sentence will be a party to the contractual relationship, and the employer is obliged to comply with the terms of this agreement. The convict has the right to rent; property rent property belonging to it is kept outside the correctional facility. The convicted person may act, in individual cases, and as an employer. For example, if he owned a car prior to his arrest he rented another person placed under the garage, and continues to comply with the terms of this agreement and after the sentencing to imprisonment¹⁷. Offenders sentenced to deprivation of liberty shall have the right of private ownership of property held in places of confinement, but

¹⁵ Minâzeva T.F. legal status of convicted persons. M., 2000. S. 82.

¹⁶ Sundurov, F.R., Bakulina L. deprivation of liberty and the rights of prisoners in Russia. Togliatti, 2000. S. 110.

¹⁷ A.A. Belyaev, the legal status of persons sentenced to deprivation of liberty. Bitter, 1976. P. 53-54.

with restrictions envisaged by the rules of the institution¹⁸. They are the owners of things and subjects that satisfy their material and cultural needs in the context of the correctional institution.

The right of private ownership of property in the colony was largely limited to the terms of the regime of serving the sentence. The convict may not acquire the right to the kind of property, conferred upon him State (housing, furniture, bedding, tableware, etc.)¹⁹. In a correctional institution are distinguished: 1) convicted on property ownership, prohibited for use in correctional institution and surrendered them to deposit (money, securities, other valuables). Possession acquired convicted in accordance with the established procedure of securities is ensured by the administration of the correctional institution (p.11 article 54 PC KR). The internal order regulations of correctional institutions contains a list of items that are prohibited to purchase, manufacture, storage and use (in particular, all kinds of weapons, explosives and toxic substances, money, valuables and securities of all types of alcoholic beverages, including beer, as well as perfumes, knives, axes and other tools, photo-, video-and film cameras, playing cards, compasses, etc.). Money, securities and other valuables illegally stored by convicts and which are discovered by the administration of the correctional institution, shall be seized and used to improve the conditions of detention in accordance with the rules of the internal order regulations of correctional institutions (art. 54p.10 PC KR). In my opinion such a rule is contrary to the constitutionally enshrined right of ownership. For example, under Russian law, money, securities and other valuables illegally kept by convicts shall be taken and stored in accordance with the rules of the internal order regulations of correctional institutions by the administration of the institution until the release of the convicted person without the right to use and dispose of them while convicts are serving their sentence²⁰. The convicted person may, with the assistance of the

¹⁸ See: Prakapovich E.V. legal status of convicted persons sentences of corrective labour. M., 1969. S. 21-23.

¹⁹ Markova M.G. civil legal status of convicted persons serving sentences in corrective labour colonies. M., 1984. S. 18.

²⁰ See: Minâzeva T.F. legal status of an individual convicted in Russia. M., 2001. C. 96; Elčaninova O.V. civil legal status of persons sentenced to deprivation of liberty in the Russian Federation. Dics. Cand. Ure. Sciences. Spb., 2004. 117. -118.

administration of the correctional institution to dispose of things that have been handed over for safekeeping, for example, to send to relatives, but he clearly is restricted in the enjoyment of them. Ownership of the items that are allowed to use, and have a meal after payment of their value. Convicts may also have personal hygiene items, clothing, may be writing accessories, books, magazines and newspapers acquired by subscription, purchased through a dealer or sent to the newspaper, magazines, parcels, food; other subjects (art. 62, 94-104 PC KR). In respect of these subjects they have the authority to hold use. Dispose of them: to sell, give, change, dispose of otherwise prohibited the rules of the internal order regulations of correctional institutions. Convicted persons are prohibited to receive, purchase, storage and distribution of publications containing propaganda for war and incitement to national or religious enmity, the cult of violence or cruelty, pornographic publications (p.2.66 PC KR). In places of imprisonment convicted persons can act as buyer's necessities, magazines, newspapers and other products in local retail outlets under the clearing settlement. Of funds in the accounts, in addition to purchase allowed for use in correctional facilities of footwear and clothing, to pay for extra services provided, at their request, as defined by the rules of the internal order regulations of correctional institutions (7.71 PC KR). Thus, the powers of possession and use of property of the convicted persons in the correctional institution are fully only for the things left behind by the convicted person when taking it to the correctional institution or legally acquired them while serving their sentence²¹. To dispose of property, belonging to him, for example, sell, donate it to relatives or other persons, the convicted person may, but only outside the correctional facility. Consider these factors in more detail. The right to private property on property located outside the prisons, it remains²². The deprivation of liberty as a form of punishment does not stop the right

²¹ A.A. Belyaev, the legal status of persons sentenced to deprivation of liberty. Bitter, 1976. S. 51.

²² See. e.g. Djumagulov A.M. the legal status of individuals sentenced to deprivation of liberty in the Kyrgyz Republic. Bishkek, 2008. P. 45; Markova M.G. civil legal status of convicted persons serving sentences in corrective

of private ownership of property acquired by the convicted to imprisonment (except in the case of forfeiture of the property upon conviction, and if it is not paid in reparation for the offence). Such property may be a House, a car and other things belonging to them on the right of private property, as well as the rights of common share or joint ownership. The convicted person may become an owner and newly acquired property through a representative or by inheritance. Person retains ownership of the owned and located outside the colony property, but changes the procedure for implementing this right: the convicted person only temporarily unable to realize the power of ownership (the possibility of economic domination the owner of the property) and power (the ability to retrieve from the property of its beneficial properties). However, the standing orders (that means committing to things acts determining her fate) it implements in full²³, i.e. it can, for example, sell, give, rent it, but with the help of representative (spouse, parent, other family member, another person) who is given power of attorney²⁴. By virtue of powers based on power of Attorney, the convicted person may directly create, modify, and terminate its civil rights and duties (for example, the property in pledge, encumber it in other ways, to dispose of it at the discretion of the principal: sell, donate, etc.). The notary certified holdings are of individuals in detention, authenticated by the head of the institution concerned (art. 204 Civil Code of the KR.). More often than not, the motive to for a convicted person to sell property is concern for the safety of that property, especially when he has no close relatives and friends, capable of providing the necessary care. When selling property the money as directed by the convicted person may be listed on his personal account in the penal colony. Another motive for the transactions is the desire to keep the property, which he cherishes most

labour colonies. M., 1984. S. 17; Elčaninova O.V. civil legal status of persons sentenced to deprivation of liberty in the Russian Federation. Dics. Cand. Ure. Sciences. Spb., 2004. S. 51.

²³ For more on this see: Civil law. H. 1. Ed. 2-e, 4th Edition. and extras. Ed. A.P. Sergeev, Y.K. Leo Tolstoy. M., 1996. S. 323.

²⁴ Bazhanov O.I., Volkov A. legal status of convicted persons. Minsk, 1983. S. 31.

often, is a House, a car²⁵. To this end, the convict has all the statutory civil ways to ensure its protection and proper condition: giving power of attorney to manage, renting of machinery and equipment, in storage²⁶. Through his spokesman, the convicted person shall have the right to carry out administrative acts, such as sales, property rentals, etc. outside the correctional facility. This raises the question of how should be provided with the best interests of the convicted person in respect of his property outside the places of deprivation of liberty, as well as the interests of other persons whose claims are related to the property, the interests of creditors, the interests of the State tax withholding, etc.

Sentenced to deprivation of liberty, which is the owner of the property, interest in it has been filed at the time of his return to freedom. However, other individuals may have some claim to the convict to be met by his estate, and therefore have an interest in a specific order was established for these claims. According professors opinion in the sphere of property law E.G. Shirvindt and Utevsky B.S. on this note: "Some European laws shall establish compulsory custody of adult prisoners, citing the interests of prisoners deprived of their ability to manage their property. Our legislation no custody of prisoners don't know»²⁷. According to O.S., Joffe opinion in the sphere of property law to establish over prisoner custody is not necessary²⁸. The ward is an institution issuing its action on disability. Guardians are completely obscure the identity of their wards in civil circulation and are obliged to conform their actions to their interests, but are not subject to these instructions. In the meantime, the prisoner who has reached the age of 18, the person capable. There is therefore no basis in the management of his assets to impose the will of a guardian and not to reckon with his own will. However, the issue of

²⁵ Sacking N.N. Civil rights and obligations of convicted prisoners in correctional labour colonies. Khabarovsk, 1992. P. 31-32.

²⁶ Markova M.G. Civil legal status of convicted persons serving sentences in corrective labour colonies. M., 1984. S. 18.

²⁷ E.G., Utevsky B.S. mass Soviet corrective labor law. M., 1957. S. 81.

²⁸ Joffe O.S. Civil prisoners in corrective-labour establishments. M, 1959. C. 15-17.

securing the assets of the prisoner and the possibility of certain related acts of management is of practical importance and requires a special legal regulation. When sentenced to deprivation of liberty has relatives or others close to him people caring about his assets, the question practically solved quite simply. More complicated is the case with single sentences. In addition, sometimes, even in the presence of relatives and prisoners on the grounds of the civil law and other relations may arise some conflicts²⁹. It should be noted that the interests of the owner, who was sentenced to deprivation of liberty are provided adequately through the transfer of its property to store inventory, but when such property is residential construction, you need to take the necessary measures and to ensure control over it.

Such a need arises in the case of single persons with no relatives or acquaintances that they could issue a warrant for the purpose of committing the actions necessary to ensure its interests. Obviously, if such acts are not entitled to public authorities, the interests of the convicted person in such circumstances are out of any protection. However, even if the convicted relatives or friends to whom he could entrust the management of their property under the power of Attorney, due effect is not always guaranteed, because between the time of sentencing to imprisonment and the direction of a power of Attorney from the place of punishment is a period of time, the continuance of which the convicted person's property remains without any supervision and therefore is at risk of squandering. Sometimes it also happens that at the time of the conclusion of the citizen in detention he had close family members living together with him, which remains its property. But subsequently, there are circumstances that require special measures to ensure the safety of property of the convicted person. So, convicted on a year and a half after the custody appealed to the Administration to take measures to preserve its assets owing to the death of his wife. The Administration took appropriate measures, and the

²⁹ See: Vereshchagin V. prediction and prevention of unlawful conduct of convicted persons in places of detention: Dics. Cand. legal. Sciences in the form of a scientific paper that also features the author's abstract. M., 1997; Mikhailov V.I. Problems of correctional services and the basic directions of their reorganization. UFA, 1997. S. 90-91; Shmarov I.V., Gamaž E.B., Pozdnyakov, Vladimir Safronov B.V. Conflicts among prisoners and crime prevention in prisons. M., 1981.

property was deposited at the place of the last residence of the convicted person³⁰. Similarly, a case worker at the time of the arrival of the colony to the place of residence of the prisoner revealed that part of his belongings seized neighbors. When the administration of the colony to detect these things brought a prisoner, neighbors not only refused to return property, but also brought a complaint on the violation by the administration of the colony rules of convicted persons in places of detention. It should also be noted that the property of the convicted may be enterprises and other property complexes, individual objects related to immovable property, securities, and other assets. For their safety, these objects can be transferred in trust by fiduciary asset management (chapter 43 Civil Code of the KR). As the holder of the property rights, the convicted person stores not only the right to property, but also carries certain responsibilities. The law specifically stipulates the obligation to properly contain the most valuable objects of cultural property, in accordance with the law related to particularly valuable and protected by the State. In the case where the owner of cultural property contains the values of the waif that threatens their values, the values in accordance with art. According to the Article 285 of Civil Code of the KR, by decision of a court may be excluded from an owner through foreclosure or sale at public auction. When redeeming cultural values to the owner shall be compensated for their costs in the amount established by agreement of the parties, and in the event of a dispute- by a Court. When selling at public auction, the proceeds from the sale is transferred to the owner the amount after deducting the costs of bidding³¹.

Similar phenomena have occurred in practice, in view of the fact that often the prisoners do not know to whom and for what kind of assistance they should apply³². Before a convict is

³⁰ Joffe O.S. Civil prisoners in corrective-labour establishments. M, 1959. S. 18.

³¹ See. Detail: commentary on the Civil Code of the Kyrgyz Republic. Part one (article by article). -2-h t. volume 2. Bishkek, 2005. P. 179-181.

³² See. Detail: Elčaninova O.V. civil legal status of persons sentenced to deprivation of liberty in the Russian Federation. Dics. Cand. Ure. Sciences. Spb., 2004. P. 114-115; Sacking N.n. Civil and family rights of convicts

always the issue of finding good representative to carry out various transactions outside the correctional facility. It is especially important for people who do not have relatives and other loved ones. It should be remembered that in the early years of the sentence they need maximum support and assistance in realization of the right to property. The administration prisons are not always able to provide them with the necessary assistance, but also occasionally reveal a lack of awareness on the rights and responsibilities that are entrusted to it in this area³³. Thus, we can conclude that in theory and practice and insufficient attention to that issue, in my view, legislation should provide for additional safeguards for the effective realization of the right to property and especially convicts entitlement orders. The administration of the correctional institution should provide every assistance in solving organizational, legal and other issues in the exercise of the right of ownership.

serving sentences in places of deprivation of liberty: Dics. Cand. Ure. Sciences. M., 1990. S. 65; Govzman Y.B., Meshcheryakov v.s., Sacking N.N. Convicted, your rights and obligations. Khabarovsk, 1992.

³³ See. For example: Shagivaliev AK Superintendent of Kyrgyzstan. Bishkek, 2001; Asanaliev T.A. formation and development of the regime of serving the sentence in corrective labour institutions of the Soviet State (1917-1985). Bishkek, 2004.

§ 2. Inheritance status of persons sentenced to deprivation of liberty

The legislation provides for certain limitations in legal relationships for those convicted of certain crimes against the person. So, according to art. 1126 of the Civil Code of the Kyrgyz Republic (hereinafter referred to as CC) "Do not have the right to inherit either by law or by the will of citizens who, through their deliberate illegal actions against the testator, one of his successors, or against the testator's last will, expressed in the Testament, have either tried to promote the vocation of themselves or others to receive or helped or tried to help increase owed to them or others share of the inheritance If these circumstances are confirmed in the courts ". However, citizens, whom the testator after losing their inheritance bequeathed the property, have the right to inherit the property. In accordance with art. 1124 Civil Code of the KR place open is the last place of residence of the testator. If the testator's place of residence is unknown or is located outside the territory of the Kyrgyz Republic, a place of inheritance is the location of the immovable property belonging to the testator or his main part in the territory of the Kyrgyz Republic, in the absence of real property – location of the main part of the movable property. In the literature, there were different views on the place of inheritance after the death of a prisoner in custody. So, professor in the sphere of property law O.S. Joffe argued that the residence of the convicted person is a corrective labor facility, where he is serving his sentence³⁴. According to professor in the sphere of property law D.N. Rozancevoj, last place of residence of the convicted person shall be based on the norms governing the right of a convicted shall be registered to the living space occupied by them before his arrest³⁵. This means that in the event of deprivation of liberty the last permanent place of residence the convicted person should be regarded as the place

³⁴ Joffe O.S. Civil prisoners in corrective-labour establishments. M., 1965. S. 49.

³⁵ Voloshin Y.N., Rozanceva D.N. civil legal status of prisoners serving a sentence of deprivation of liberty. M., 1965. S. 66.

where he had the right to living space³⁶. According to the opinions of professors in the sphere of property law N.I. Karusev, E.B. Èjdinova argue that the place of the opening of the inheritance after the person who dies in institution, is the last place of residence, not place of detention³⁷. This rule is of judicial and notarial practice.

Such a divergence of views scientists are not accidental. You agree that the place of deprivation of liberty, regardless of the length of stay of the convicted person, may not be recognized as his permanent residence. Even if the convicted person has spent most of his life behind bars, this rule cannot be shaken. This is in line with existing legislation, for a stay of the convicted person in places of deprivation of liberty, shall always be temporary. Otherwise, Kyrgyzstan should recognize before all civilized humanity that his subjects in places of deprivation of liberty. Among persons deprived of their liberty may be citizens at large were called necessary heirs (1149 Civil Code of the KR). These include: minors or disabled children of the testator, his disabled spouse and parents, and disabled dependents of the testator³⁸. Dependents of deceased citizens are listed in art. 1148 Civil Code of the KR. First of all, it concerns minors serving sentences in young offenders' institutions. Temporary relinquishment of duties related to the content of the sentenced person while serving their sentence, may continue with the release last seriously undermine their right to receive their compulsory share in ancestral property. Reference to the absence of a will in favor of the sentenced person cannot affect the General course of reasoning. Suppose that a temporary stay in places of deprivation of liberty, as a general rule, should not affect the legal status of the heir. In the event of the death of the convicted person, the right to a compulsory portion of an inheritance shall pass on a general basis. Persons named dependents and applying for a compulsory share of the inheritance, can purchase a compulsory their status only if the convicted person in isolation, they routinely

³⁶ Ibid., p. 67.

³⁷ Karusev N.I. civil legal status of persons sentenced to deprivation of liberty. Ryazan, 1973. S. 6.

³⁸ Civil law: Textbook. 4-ed. Ed. A. p. Sergeeva and Y.k. Leo Tolstoy. M., 2006. T. 3. C. 652-653.

receive material aid, which for them was the main or a constant source of livelihood.

Unfortunately, it must be noted that, at present, be convicted and serve as landlord (patron) is extremely difficult due to the fact that a large proportion of prisoners are not provided, and earnings of working convicts so minuscule that sometimes don't provide coverage for their food, clothing and household needs. For example, in June 1, 2009 correctional institutions of the Kyrgyz Republic 9753 convicts were serving sentences, while in the world of work involves not more than 9 per cent of the total, and the most primitive types of work associated with the prison service³⁹. Note, however, that in places of deprivation of liberty may be quite wealthy individuals while serving their sentence due to the capitalization of their profits and other legal sources, still regularly performs maintenance functions. Therefore, in this situation, the dependents should not lose the status of compulsory heir. After the death of the convicted person in the hereditary mass can include any property belonging to him on the right to private ownership or right of common (in share or joint) property, including property held in a correctional facility. In the event of the death of the convicted person, the Administration should take all necessary measures to maintain the property. Failure to effect service to parcel a parcel addressed to a deceased person should be returned to the sender by return e-mail addresses. The estate property is not included. If the sentenced person transferred money from him on the property right (taken from his personal account by power of Attorney, cash, stored at the sender or on similar grounds), they should be part of the estate on the basis of their deceased person. What if money is sent to the recipient and do not belong to it. What is the legal nature of the money transfer? Logical-juridical analysis suggests that there may be a contractual relationship, since convicted in life has the right to transfer or withdraw it. Then, go right to the ownership of the money transfer should be carried out according to the rules of civil law. According to the

³⁹ Humanization of the criminal law of the Kyrgyz Republic: Problems of theory and practice. Under Gen. Ed. M.t. Kajypova. Bishkek, 2009. S. 156.

Article. 222 Civil Code of the KR, ownership of the acquirer of things (in this case money) under the contract arises from the moment of transfer, unless otherwise provided by a statute or contract. Transfer is handing things over to the recipient, as well as delivery to the carrier or the leasing of liaison organization to forward to the buyer of the things alienated without the obligation of delivery. A thing is deemed to be handed over to the recipient, since its actual entry into the possession of the acquirer or the specified by him. Considering that money traditionally refer to things, certain generic characteristics, ownership could move only when the effective the transfer stuff. Some exceptions to this rule, because of their specific use, will not be the subject of my analysis. Hence it can be concluded that failure to effect service money to the deceased person did not allow you to make their hereditary wealth. They must be returned to the sender. Entry into the right heir convicted person can produce the ways and terms; under art. art. 1153-1154 Civil Code of the KR. Because of the isolation of the convicted person, as a general rule, may not personally take possession of heritable property. This power is realized with the help of Attorney at liberty. The convicted person may personally submit an application concerning acceptance of inheritance to the notary authority directly at the place of opening of the succession. Period for accepting inheritance is not suspended or interrupted, as is permissible with respect to the limitation period. It can be restored by court on grounds provided for by art. 1155 Civil Code of the KR. The mere isolation of a convicted should not be considered a good reason for missing a deadline for acceptance of inheritance, but some of the circumstances related to it, should draw the attention of the Court. For example, what if an attorney because of bad faith has not complied with the obligations under the Treaty and has not adopted within the prescribed period the inheritance in favor of the convicted person. I believe that it is not always correctly recognize the guilty convicted and it is necessary to consider the objective and subjective difficulties in finding a good representative, as well as inability on the part of the convicted person to exercise control over him. Late registration of the power of attorney on the acceptance of the inheritance can occur due to the transfer of convicts from one

colony to another, his long illness, etc. In case of positive decision of this matter has an important role to play in the administration of the institution which is obliged to assist him, in particular, in the timely consideration of requests for registration and sending power to an elected representative. In connection with the adoption of the second Civil Code of the KR has raised a number of issues relating to and awareness about the legal entity that can confront a penitentiary practice⁴⁰. Acceptance of the inheritance is an open place of inheritance to the notary or authorized under the law to issue the certificate of inheritance to an official declaration concerning acceptance of inheritance to the heir or successor statement on the issue of the certificate of inheritance. If a statement passed to the notary of the heir by another person or is sent by mail (which is typical for a convict in prison), the signature of the heir to the statement shall be certified by a notary, officer authorized to perform notarial acts (art. 1153 Civil Code of the KR), or by a person authorized to certify powers of Attorney in accordance with clause 2. 204 Civil Code of the KR. Consequently, the statement of the accused concerning acceptance of inheritance must necessarily be certified by the institution. Otherwise, the application is not accepted by a notary public and is considered as not submitted. The question arises: should we be so categorical in circumstances where the sentenced person is in deep isolation and often deprived of possession of the necessary information on inheritance law? Enforcement experience shows that even at large, there are many violations of rules of application concerning acceptance of inheritance. Therefore, in my opinion, is unlikely to be so categorical assertion meets the needs of the evolving practice of serving their sentence in prison. If necessary, the identification of the signature of the applicant, rather the usual Graphology examination, the result of which could be the basis for the Court's decision to transfer the sentenced person to the list of successors. According to art. the Civil Code of the KR1153 recognized until proven otherwise,

⁴⁰ See. Detail: Commentary on the Civil Code of the Kyrgyz Republic. Part two (article by article). In 4-h t. Volume IV. B.: the Academy, 2005. C. 410-530.

that the heir has inherited, if he has committed actions that demonstrate actual acceptance of inheritance⁴¹, particularly if the heir: -entered into the possession or control of hereditary property; -take measures to preserve the estate, protect it against infringement or claim of a third party; -produced at its own expense, the cost of maintaining the estate; -paid at the expense of the debts of the testator or received from third parties owed money to the ancestor. In connection with the discussion of the problem of acceptance of inheritance, there is another, quite a delicate question: what will be the fate of the estate, if the heir, who has agreed to accept the inheritance, formally takes action under art. 1153 Civil Code of the KR CD. Whether its \"silence\" factor acting as \"acceptance\", or, on the contrary, the heir thus renounced the inheritance? A rich notary and court practice offers a large number of us cases when heirs are in a similar situation are treated in courts asking them to confirm their right to inheritance. Will conduct a brief analysis of civil legislation on this issue. Legal regulation of unilateral transactions (and the acceptance of the inheritance refers specifically to unilateral transactions in civil law) is determined by the Church. 172 Civil Code of the KR. Subject to the General provisions on obligations and contracts in so far as this is not contrary to the law of unilateral nature and the substance of the transaction. In accordance with paragraph 2. 399 Civil Code of the KR, silence is not acceptance, unless otherwise follows from a statute, usage of trade, or previous business relationship of the parties. Logical-juridical analysis of art. 1153 Civil Code of the KR shows that special legislation on inheritance does not provide such a method of acceptance of inheritance. We can assume that silence has become the heir to the renunciation of inheritance. Naturally the question arises how to relate to a similar deal with rejection of the inheritance? Note that the corresponding regulation in the civil law of acceptance relations is traditional and established and unlikely to expose his constructs⁴². However, in matters of

⁴¹ Commentary on the Civil Code of the Kyrgyz Republic. Part two (article by article). In 4-h t. volume IV. – B.: Academy, 2005. P. 492-493.

⁴² See. For example: the collection of rulings of the plenum of the Supreme courts of the USSR and RSFSR in civil cases. M., 1999. P. 273.

inheritance, in the view of the author, this rule should be stated in the act more accessible to the citizens' perception of form. The fact of the matter is that the hereditary legal relationship as the heir becomes virtually the entire population of the country, most of which have weak knowledge of jurisprudence, including the succession law. As noted in the literature for more than 70% of respondents believe that in good faith for accepting inheritance is enough internal will to accept the inheritance heir, which can be expressed in any form, including, after the expiration of the time limit for acceptance of inheritance⁴³. Most of them are genuinely puzzled about the fact that for acceptance of inheritance without fail it is necessary to make certain legal or factual. They just wait for the six-month period for accepting inheritance. Imagine their surprise (sometimes with tragic consequences) when, being in the Notary Office for registration of rights of heir, they were denied the right to the inheritance, explaining their "reluctance" to enter the right heir. A simple reading of the law (art. 1153 Civil Code of the KR) is unlikely to be sufficient for the proper understanding of its essence. What you need to do to "law" was understandable and accessible to the citizens of the Kyrgyz Republic and other persons living on its territory? In my opinion, enough art. 1153 Civil Code of the KR supplement paragraph 3 to read as follows: "Heir without committing the actions stipulated in p. 1.2 of this article is considered to have renounced the right to inheritance". So "Terrible" legislative alert would be a serious educational and preventive factor, and at the same time, it does not exclude or modifies existing and well-established ideology of treaty law in the context of the defined problem. With regard to the subjects of normal home environment and daily use, in accordance with art. 1151 Civil Code of the KR they form a special separate part of the inheritance, which passes to the heirs according to the law, regardless of their line at the expense of their share, lived on the opening day of the inheritance together with leaver. Thus, we can conclude that persons sentenced to deprivation of

⁴³ Sacking N.N. Civil capacity of convicted prisoners in places of deprivation of liberty: monograph. Khabarovsk, 2003. S. 172.

liberty, with few exceptions, do not lose their right to inherit, but for the timely adoption of the reopened heritage of convicts in prison, an important role to play in the administration of correctional institutions. And help with her hand on succession law should be an emergency, immediate nature, because in many cases, inheritance relationships are urgent.

Conclusion

The paper has examined various scientific approaches to the definition of the nature and scope of the property rights of persons sentenced to deprivation of liberty, the complex analysis has been conducted with respect to several civil and criminal-executive laws governing the legal personality of the convicted persons in the sphere of property relations. On the basis of this study we may make the following conclusions:

1. The civil legislation of the Kyrgyz Republic does not have a single definition of property rights. Despite this, the term is most often used in the sense of the legislator that is secured by law to require the monetary payments, to provide services or other consideration. There is also a broader understanding of property rights as a set of legal property relations opportunities provided by law. In this case, we are talking about the legal capacity of a citizen in the field of property management. Finally, there is a third meaning of "property right", which is a subjective civil right of property nature. Under the proprietary nature of the subjective right, we mean the ability of the person to participate in civil-law transactions, which involves the property that has monetary value and is alienable. An example of such property rights applies to the majority of civil law, both in rem and obligation.

2. Conviction of a person is a legal fact giving rise to significant changes in the legal status of the individual. These changes require that there be specific rights and obligations of convicted persons, and that they should be guarantees for their compliance. In addition, the legal status of convicted persons is characterized by limitations in the exercise of their civil rights. The scope of these restrictions depends on the type of criminal punishment and the behavior of the convicted person during his serve.

3. Although the convicts have the same structure of property rights that all other citizens have, the property rights of the former is narrow in its scope. This is because offenders sentenced

to deprivation of liberty, remaining civil rights fall within the scope of criminal-executive legislation setting out a number of restrictions in the field of property relations. These restrictions relate to the fulfillment of the conditions of execution of the penalty of deprivation of liberty, which involve isolating an offender from society. The execution of the penalty regime demands relates more to the basic rights of the individual, the right to property ownership. In particular, the convicted persons shall purchase, produce, store, and use the things envisaged by the rules of the internal order regulations of correctional institutions. However, this does not mean that the convicts are deprived of personal property rights. In this case, it is only their temporary restriction because technically they are not deprived of any right of ownership or other property rights.

4. In isolation from society, the convicted person is not deprived of the right of ownership to the property belonging to him/her, but it is limited in terms ownership. He/she, generally, has the right to inherit and bequeath, to perform any transactions not prohibited by law, to participate in the commitments, has full rights of the author of works of science, literature and art, of inventions and other results of intellectual property protected by law. However, in connection with a stay in prison the convict indirectly limited in joining the right successor in business activities of those or other deals, election of domicile.

5. The property of a person serving a sentence in places of deprivation of freedom can be divided into two main categories: located in the correctional facility (which, in turn, is divided into a prohibited for storage and use of convicts in correctional institution and permitted the internal regulations) and the remaining outside it. In the first and second case, defendant may exercise only a fraction of the power of the owner. A property located in a correctional institution and permitted by the rules governing the internal order, the owner may tend to own and use, and in some cases control (for example, by transferring money in a personal account, relatives). The opposite situation occurs with property remaining outside of correctional

institution. The convicted person may only dispose of and, in some cases, to use, without actually owning it.

6. Convicted persons are fully entitled in inheritance relationships and can act in the a role of the testator, and as inheritance recipient (except for the cases specified in article 1126 Civil Code of the KR when a person may be deemed an unworthy heir) taking into account the certain specifics of their presence in places of deprivation of liberty. This specificity is manifested above all in case of the acceptance of inheritance by the convicted person. When granting the convicted short-term (up to seven days) leave in connection with the death of a family member to enable acceptance of the inheritance personally. If leave is not permitted, such activities are carried out through a representative with power of attorney to accept the inheritance or not when it comes to legal representatives.

Thus, the proper and optimal implementation of the property rights of persons sentenced to deprivation of liberty, depends on the level of legal literacy of the convicted person, as well as correctional officers, that allows to solve many problems of property nature in the process of serving their sentence, as well as in matters of labor and domestic device after being released from prison, helping to achieve the objectives of criminal punishment.

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