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ABOUT PLACES
OF SERVING A CRIMINAL SENTENCE
IN THE FORM OF ARREST

О МЕСТАХ
ОТБЫВАНИЯ УГОЛОВНОГО НАКАЗАНИЯ
В ВИДЕ АРЕСТА

Abstract. The article is devoted to issues related to the places of serving a criminal sentence in the form of arrest in the Republic of Belarus, the peculiarities of transferring convicted persons to arrest for further serving their sentences from one arrest house to another. Some suggestions are made regarding the circumstances that should be taken into account when distributing and transferring convicts to detention houses.

Keywords: place of serving the sentence, the house of arrest, the convicted person, transfer to the houses of arrest.

Аннотация. В статье рассматриваются вопросы, касающиеся мест отбывания уголовного наказания в виде ареста в Республике Беларусь, особенностей перевода осужденных к аресту для дальнейшего отбывания наказания из одного арестного дома в другой. Вносятся некоторые предложения относительно обстоятельств, которые необходимо учитывать при распределении и переводе осужденных в арестные дома.

Ключевые слова: место отбывания наказания, арестный дом, осужденный, перевод в арестные дома.

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The norms of the penal legislation of the Republic of Belarus indicate that the punishment in the form of arrest is carried out in the institutions of the penal system. Currently, this type of criminal punishment in most cases is carried out in the arrest houses located in the protected areas of the institutions of the penal system. The place of serving sentences, the execution of which is assigned to special institutions where convicted persons are placed for the period of serving the sentence, and are such institutions located on a certain territory (Orlov, V. N. 2008, p. 208). Detention houses as isolated institutions for the execution of sentences in the form of arrest have been established in all regions and are under the jurisdiction of the Department for Execution of Sentences of the MIA of the Republic of Belarus (hereinafter – DES). Currently, the detention houses are located on the territory of two correctional colonies, two prisons and three pre-trial detention centers

The creation of arrest houses in correctional colonies was carried out through the construction of separate buildings in compliance with the legal requirements for this type of punishment. At the same time, it was taken into account that when serving a sentence in the form of arrest, it is impossible for convicts to communicate with the environment, just as it is impossible for them to communicate with each other in the same arrest house (with the exception of persons held in the same cell). Arrest houses located on the territory of pre-trial detention centers were created on isolated floors or in buildings, respectively, the cells were re-equipped taking into account the requirements of the law for the detention of convicted persons for arrest.

In part 1 of Article 58 of the Penal Code of the Republic of Belarus (hereinafter – PC of the Republic of Belarus), two positions are indicated: the place of serving the sentence in the form of arrest (arrest house) and the location of the arrest house in which the citizen sentenced to arrest must serve the sentence (a settlement closest to the place of residence

of the person sentenced to arrest). It should be noted that the Instructions on the procedure for sending persons sentenced to imprisonment to correctional institutions and transferring persons sentenced to imprisonment for further serving of their sentences from one correctional institution of the penal system of the MIA of the Republic of Belarus to another (approved by the Resolution of the MIA of the Republic of Belarus No. 389 adopted on 12.12.2005) regulate the procedure for sending persons sentenced to arrest to the place of serving their sentences. It is a guilty verdict or a court ruling changing its definition or ruling that has entered into legal force (Article 65 of the PC of the Republic of Belarus) that is recognized as the grounds for the execution of a sentence in the form of arrest. After the court verdict comes into force, the convicted person is sent to the arrest house.

Law enforcement practice shows that the period of detention until the sentence enters into legal force can be equal or almost equal to the term of the sentence in the form of arrest imposed by the court. In this regard, when the court verdict enters into legal force, the convicted person is immediately or after a few days is subject to release from the pre-trial detention center. The presence of such cases indicates that the person sentenced to the punishment in the form of arrest, in fact, did not serve this sentence in the arrest house (the essence and purpose of the appointment of this punishment is meaningless). In such cases, it is advisable for the courts to apply an alternative measure of criminal liability in the form of, for example, conditional non-application of the imposed sentence.

To serve their sentence, those sentenced to arrest are sent to the arrest house no later than ten days from the date of receipt by the administration of the pre-trial detention center of the notification of the entry into force of the court verdict. On the day of receipt of the court's guilty verdict against the convicted person, employees of the special department of the pre-trial detention center send an application

to DES for the issuance of a convoy for sending the convicted person to the place of serving the sentence. It becomes obvious that the convicted persons are sent to the place of serving their sentence (to the appropriate arrest house) by the order of DES, as a rule, to the arrest house that is geographically located in the nearest city (district, region) at the place of residence of the citizen who committed the crime. In accordance with the general requirement, the convicted person must serve the entire sentence, as a rule, in one house of arrest. Since those sentenced to arrest are held in conditions of strict isolation from society, this provision of the law is especially important for arrest (as opposed to imprisonment), taking into account not only the short-term nature of the arrest, but also the conditions of isolation. It is known that the strict isolation of those sentenced to arrest from society consists in exclusion of: a) free communication of convicted persons with persons outside the house of arrest; b) free movement of convicts within the arrest house; c) free direct communication of those sentenced to arrest with other convicts serving their sentences in other cells.

When distributing a convicted person to the arrest house, it is important to pay attention to a number of circumstances. Persons convicted of crimes that have had a great public response, as a rule, are not sent to the arrest house, which is located on the territory of their place of residence, conviction, as well as the commission of the crime and the place of residence of the victims. Persons who are accomplices in one criminal case, as a rule, are not sent to serve their sentences in one institution. First-time convicts, former employees of courts, law enforcement agencies, and foreign citizens are sent to serve their sentences in a separate correctional institution. Persons, who are close relatives, serve their sentences in the same institution in the absence of exceptional circumstances (paragraph 6 of Instruction No. 389 adopted on 12.12.2005). It is necessary to indicate that by the decision of the head of the territorial body of internal affairs, before the

transfer of convicted persons to the place of serving their sentence, they can be held in a pre-trial detention center, and the term of such detention should not exceed five days. The term of detention of persons sentenced to arrest in pre-trial detention centers is counted as the term of punishment, and one day of detention in a pre-trial detention center corresponds to one day of arrest.

The penal legislation provides for the possibility of transferring convicts, sentenced to arrest, from one house of arrest to another due to illness or to ensure personal safety, as well as the presence of other exceptional circumstances that prevent the convicted person from being in this house of arrest. It is obvious that these provisions are borrowed from the legislative norms regulating the serving of a sentence in the form of liberty deprivation. The issue of transferring convicted persons in the presence of exceptional circumstances is being considered: on the initiative of the head of the DES, the first deputy head of the DES or the administration of the correctional institution; on the initiative of the internal affairs bodies; on the applications of convicted persons and their relatives, other citizens (paragraph 7 of Instruction No. 389 adopted on 12.12.2005). The law enforcement practice of a sentence execution in the form of arrest in arrest houses shows that the need to transfer a convicted person to another arrest house due to illness is associated with the inability to provide qualified or special medical care to the convicted person in the medical part of the correctional institution at the location of the arrest house.

Melent'ev M. P. (1997, p. 69) rightly notes that "not every disease can entail the need to transfer a convicted person from one arrest house to another". The transfer of a convicted person due to illness should be carried out only if the recommendation for such a transfer is provided for by a medical report. The transfer of a convicted person to another house of detention in order to ensure his personal safety may be associated with the psychological incompatibility of the convicted person with

other convicts and arising on this basis a conflict-aggressive relationship with fellow inmates. In this regard, the security of the convicted person can be ensured by transferring him to another cell. Other reasons why it is possible to transfer a convicted person to another house of detention include circumstances that make it difficult for the normal functioning of the house of arrest (reorganization or liquidation of the arrest house; natural disaster, fire; epidemic that has engulfed the territory where the arrest house is located; the introduction of a state of emergency or martial law in this area), the need to implement operational-regime measures to prevent offenses in the arrest house and solve the committed crimes; social conflicts in the area of the institution's location; mass riots, etc.

The transfer is made at the written request of the convicted person or his relatives or a reasoned report of the staff of the arrest house (addressed to the head of the department), who are responsible for the protection, supervision, organization of the correctional process, medical support in the arrest house. DES considers the application (report) with the materials attached to it, confirming the validity and objectivity of the grounds for the transfer, and makes a decision on the expediency or in expediency of allocating a discharge order and transferring the convicted person to

another arrest house. Thus, the definition of a special place for the execution and serving of arrest is provided for by the current penal legislation, but at the same time there are a number of circumstances that must be taken into account when distributing and transferring convicts to arrest houses.

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