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Iryna Pyvovar[1]
Yuriy Pyvovar[2]

CONCEPT, REGULATORY FRAMEWORK AND TYPES OF RESTRICTIONS OF RIGHTS OF PEOPLE SENTENCED TO IMPRISONMENT

[1]Institute of Criminal-Executive Service of Ukraine
4, Kolectorna str., Kyiv, 01121, Ukraine
[2]National Aviation University
1, Kosmonavta Komarova Avenue, Kyiv, 03680, Ukraine
E-mail: [1]pani_pyvovar@ukr.net; [2]pyvovar_yuriy_2008@ukr.net

Abstract

***Purpose**: to develop theoretical and legal basis and analyze regulatory framework of restrictions of rights of people sentenced to imprisonment. **Methods:** structured system, comparative legal, special juridical and logical-normative methods were methodological foundation of the study. **Results**: there have been defined features of restrictions of rights of people sentenced to imprisonment on the basis of which the definition of the restriction is given; the legal and regulatory framework for restricting the rights of prisoners is systematized. There is defined the absence of clear system and continuity in restrictive norms in the scheme of "international legal norms – constitutional norms – norms of special criminal executive legislation". The paper makes the case for establishing restrictions of rights of people sentenced to imprisonment exclusively by law. The rational criteria for the classification of restrictions of rights are determined, as well as the characteristics of restrictions of rights of convicts are formulated. **Discussion**: the defined definition, essential features of restriction of rights of people sentenced to imprisonment, the systematization of normative legal sources regulating such restrictions, as well as the classification of the types of rights restrictions of the specified category of people are proposed to be used as theoretical basis for further scientific research of the issues of securing rights and freedoms of people sentenced to imprisonment.*

Keywords: classification of restrictions of rights; international and legal acts; legal status of prisoner; people sentenced to imprisonment; restriction of rights; theory of restriction of rights

1. Introduction

Constitutional civil rights which provide for implementation, safety and protection of high social values, are rightly considered to be the achievements of modern civilization. According to the general principles they are "inalienable and inviolable" (Article 21 of the Constitution of Ukraine). The Constitution of Ukraine in accordance with generally accepted principles and standards of international law proclaims: "An individual, his life and health, honour and dignity, inviolability and security shall be recognised in Ukraine as the highest social value. Human rights and freedoms, and guarantees thereof shall determine the essence and course of activities of the State. The State shall be responsible to the individual for its activities. Affirming and ensuring human rights and freedoms shall be the main duty of the State." (Article 3) [3]. However, the consolidation of the rights and freedoms of an individual at the constitutional level does not mean that these rights cannot be limited at all. This is logical, as the implementation of the rights and freedoms of an individual in social life is faced with private and public interests of other subjects of legal relations. Accordingly, a certain restriction of fundamental rights and freedoms becomes inevitable, which, of course, is not a goal in itself or practices of any disregard of the law of the state. Therefore, in accordance with international

acts of human rights, the Constitution of Ukraine permits the restriction of human rights and freedoms, but to the extent this is necessary for the purpose of securing the rights and freedoms of other citizens, public order, protection of the constitutional system and territorial integrity. It is no coincidence that in Part 2 of Article 29 of the Universal Declaration of Human Rights there is a principle, which limits the rights and freedoms of an individual for the public good: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society." [2].

Most frequently the state permits lawful reduction in rights of convicted persons serving their sentences in correctional facilities. Moreover, there can be restrictions of rights of mentally ill people receiving forced medical treatment, who were placed in criminal procedural and administrative detention. The restrictions are also possible in a state of emergency, at a time of war. All these cases are not part of our research as they are of other legal nature.

The justice of certain restrictions of rights, which are so important for people, is beyond doubt, since preservation of public order and general welfare is impossible without forced placement of socially dangerous people to correctional facilities. However, restrictions on possession and enjoyment of different benefits during execution of a punishment in the form of restriction of liberty cannot be unreasonable; they must be based on legal norms. The nature and extent of these restrictions are crucially important, as they realize human rights in detention facilities.

The issue of restrictions of rights of convicts deprived of their liberty by court sentence is additionally actualized due to the need to form "ideal" legal framework aimed at ensuring the rights of prisoners against the background of dynamic legal framework reforming in Ukraine, European integration, brining national legislation to international prison norms, humanization of national penal system, as well as increased number of prisoners' complaints to the International Court of Justice and unavoidable restrictions of rights of convicts in detention facilities.

2. Research task

The purpose of the study is to develop theoretical and legal basis of restrictions of rights of people sentenced to imprisonment. To achieve the goal, the following scientific tasks are foreseen: to define the concept and features of restrictions of rights of people sentenced to imprisonment; to describe the status of legislative environment of restrictions of rights of prisoners and to point out major concerns in this area; to disclose general classification characteristics of restrictions of rights of convicts.

3. Results and Discussion

3.1. The concept of restrictions of rights of people sentenced to imprisonment

The concept of restrictions of rights is generally associated with the deprivation of certain rights of a citizen. In our study "restriction of rights" will be considered the same as "limitation of rights".

In the Large Explanatory Dictionary of the Contemporary Ukrainian Language the term "restriction" means a certain rule or principle that restricts the rights of individuals [1, 643].

As for restrictions on fundamental rights and freedoms, it should be noted that there is no common understanding and interpretation of the concept of "restriction", both in domestic legal literature and legislation, as well as in international legal documents. Thus, in the Universal Declaration (Paragraph 2 of Article 9), the Covenant on Economic, Social and Cultural Rights (Article 4), the Document of the Copenhagen Meeting of the Conference on the Human Dimension of the CSCE (Article 24), there is used the term "restrictions"; in the Covenant on Civil and Political Rights (Article 4) – the term "derogations by states from their obligations"; in the American Convention on Human Rights (Article 27) – the term "suspension of guarantees", and in the European Convention for the Protection of Human Rights and Fundamental Freedoms, there are equally used two terms – "restrictions" (Articles 8-11, 18) and "derogations from their obligations" (Article 15).

The term "legal restrictions" in relation to the generally accepted notion of restrictions (limiting the opportunities, setting within certain limits, etc.) is more specific and special. In theory, legal restrictions are predominantly interpreted as: "limiting the right under conditions provided by the statue and in a certain order" (M. Selivon) [11]; "the change in the content and scope of the proposition of law" (M. A. Nagorna) [13]; "suspension or reduction of the rights and freedoms defined and guaranteed by the Basic Law" (O. Skrypniuk) [12]; "reduction

of the rights and freedoms and legitimate interests of individuals and legal entities" (Yu. Figel') [15]; "limiting the content and scope of the existing rights and freedoms" (V. Covhan) [16]; "a certain limitation of the content of individual rights and freedoms or total prohibition of their use" (K. Melnyk) [5], etc.

Thus, despite the fact that restriction of human and citizen's rights and freedoms is an interdisciplinary institution of law and is under the study in various aspects, there is no common opinion in legal science regarding the understanding of the category of "restrictions of rights". According to the analysis of doctrinal sources in science, one can find many definitions of "restrictions of rights", and different scientists interpret it differently. First of all this situation is due to the fact that understanding of "restriction" depends on the scientist's scope of activity. Some scholars cover only a part of the general concept; others try to cover all aspects of the use of this concept, and to offer a single definition.

For a more accurate understanding of the restriction of rights, let us introduce a view of the theorists of law P. M. Rabinovych and I. M. Pankevych, who indicate that human rights can be divided into qualitative and quantitative indicators, namely content and scope of rights [7, 16].

In accordance with the main provisions of the theory of state and law, the content of subjective right, namely qualitative indicators of right, is determined by three components: the right to act, the right to demand and the right to protection. Therefore, the restriction can be recognized as the exclusion of at least one of the components of subjective rights. An example is the right to private property of a land plot of a convicted person (Article 325 of the Civil Code of Ukraine), that is he can dispose of it (sell or exchange), but cannot use it. This is a restriction of the right to act.

As follows from the decision of the Constitutional Court of Ukraine, "the scope of human rights is their intrinsic property, expressed in quantitative indicators of human capabilities, which are reflected by relevant rules that are not homogeneous and general. Universally recognized is the rule in accordance with which the essence of the content of fundamental right cannot be violated in any case" [10]. From this definition it becomes obvious that the scope of rights is the determination of certain limits in public relations, and the citizens should not be beyond them exercising their rights and freedoms. In other words, the person can act only within the limits established by the law. For example, a convict is allowed to keep not more than 10 books (Article 109 of the Criminal Executive Code of Ukraine), and this restriction is not established for freemen.

On that basis, it can be noted that limiting one of the elements of quantitative or qualitative indicators of the right, its content and volume is a restriction of human rights. At the same time, we are convinced that such restriction should be exclusively de jure (regulated by the laws of Ukraine), and not de facto.

Thus, the analysis of current state of the issues of rights and freedoms restrictions gives grounds to identify the following essential aspects of the concept of human rights restriction: 1) the restriction is an exception (exclusion) from the general set of human rights and freedoms that belong (or are provided) to an individual. Such an exception, that is the quantitative reduction of rights and freedoms that already belong to a person, is due to various objective or subjective circumstances. This situation arises when a person is in a correction facility being found guilty by a court; 2) a legal restriction exists when the legal situation deteriorates, which has appeared in the reduction of possible behavioral patterns; 3) restriction is a limitation of the scope and (or) content of specific rights and freedoms by establishing spatial boundaries, time frame, set of people, or certain behaviors of individuals.

The most striking instance of this are the norms of protective legislation (criminal, criminal procedural, criminal executive, etc.). It is sufficiently reasoned that V. O. Chovhan distinguishes author's list of signs of legal restrictions, which can also serve as a source of scientific analysis: limiting the content and scope of existing human rights and freedoms; restriction is formally determined; restriction of the right is applied by the state; this restriction is established with the corresponding purpose [16, 57].

Summarizing the above, based on the main features of this category, we can define the concept which should be used in characterizing the restrictions of rights of convicts. *The restriction of rights of people sentenced to imprisonment is narrowing of content and scope of existing rights and freedoms established and normatively stipulated by the state as a consequence of having special legal status of convicted person*.

The *signs of legal restrictions of convicts* include: 1) certain exclusion from the general status of a person and a citizen, which is defined by a

special legal status; 2) manifestation of deterioration of the legal status of a person; 3) narrowing of the scope and content of existing human rights and freedoms; 4) not only utilitarian but also punitive nature; 5) legislative regulation.

3.2. Regulatory framework of restrictions of rights of convicts

The legal regulation of restrictions of rights of people sentenced to imprisonment is based on the following set of legal documents: 1) International Legal Acts on Human Rights; 2) the Constitution of Ukraine; 3) Criminal Law; 4) Criminal Executive Legislation; 5) Standard Minimum Rules for the Treatment of Prisoners; 6) other legal acts.

This scheme seems to be the most optimal; it involves consideration of human rights restrictions in detention facilities consistently from general legal principles to special ones. It should be understood, that constitutional provisions are the "framework" of the institute, which proceeds from the relevant international legal norms and develops in the norms of legislative and subordinate acts of various branches of law.

The international legal documents on human rights include the following fundamental legal acts: the Universal Declaration of Human Rights (1948), the International Covenant on Economic, Social and Cultural Rights (1966), the International Covenant on Civil and Political Rights (1966), the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (1984), the Convention on the Rights of the Child (1959). On the basis of the abovementioned and other fundamental international legal acts there were developed corresponding regional documents: the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950), the American Convention on Human Rights (1950), the African Charter on Human and People's Rights (1986), the Asia-Pacific Declaration of the Rights of Individuals and Nations (1988), the Commonwealth of Independent States Convention on Human Rights and Fundamental Freedoms (1995). Most of these documents have a similar content, including those concerning the restriction of the rights.

Therefore, it should be noted that current public international law has no normative legal act that would define clear criteria for restrictions of fundamental rights and freedoms of individuals, including prisoners. At present, international documents contain only general provisions.

It should be mentioned that the Constitution of Ukraine contains general provisions on the status of convicts. Thus, Part 3 of Article 63 provides: "A convicted person enjoys all human and citizens' rights, with the exception of restrictions determined by law and established by a court verdict" [3].

The norms of the criminal law define the restrictions of human rights more substantially than international legal and constitutional norms, but without going into details, as in the criminal-executive law; they describe the boundaries, outlines, limits of restrictions and define their general nature. Thus, the constitutional right to liberty is limited to the establishment of the interim period during which this restriction is carried out, and the appointment of a penal colony regime, since the combination of these factors largely depends on the nature and extent of the restrictions and punishment.

In the norms of criminal executive law, the restrictions of rights of prisoners are regulated most fully and in detail. When analyzing the Criminal Executive Code of Ukraine it can be noted that the system of the whole Code is based on the rights and responsibilities of convicts. Of course, comparing the rights of a free person and a convict, one can observe the difference between these rights.

Article 8 of the Criminal Executive Code of Ukraine provides the rights of convicts. They are common to these relationships, and are the embodiment of some mandatory constitutional norms. These rights are inherent only in this field of law. But the Code does not specify which rights might be limited. This can be observed only if the rules of the Code are studied. As an example there can be specified the content of Article 128 of the Code, in which Part 1 states: "In colonies, f*reedom* to manifest *one's religion* or *beliefs* may be *subject only* to such limitations as are *necessary* to insure isolation and *public safety*" [4].

The Standard Minimum Rules for the Treatment of Prisoners (adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders on 30August 1955) [6] do not contain norms in which the basic principles of restrictions of rights and freedoms of convicts would be directly reflected; there are no references to the most important international legal documents. However, a number of norms of these Rules in terms of restrictions on rights of convicts are fundamental, including Article 27 which states: "Discipline and

order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life". At the same time this principle does not impose restrictions on any specific rights, and it can be referred to the principle of legality, which prohibits restricting the rights of convicts beyond certain limits.

The issue of the criteria for defining "minimum differences" remains unsolved. Except the Standard Minimum Rules for the Treatment of Prisoners, there are a number of other international legal acts. Of course, in relation to people sentenced to imprisonment, it is advisable to systematize the basic restrictions of rights of this category of people, defining their approximate content. This may be reflected in the Standard Minimum Rules for the Treatment of Prisoners, where it makes sense, in our opinion, to include the basic principles and other acts to establish a single international legal penitentiary document.

Among the other legal acts containing legal restrictions of convicts there is also the Internal Order Regulations of Penitentiary Institutions approved by the Ministry of Justice of Ukraine, Order of 29 December 2014, No 2186/ [9]. We hold the position that restrictions of rights should be foreseen exclusively by law as a type of normative-legal act, since: mandatory binding of restrictions in the law is contained in some international documents (for example, Article 29 of the Universal Declaration of Human Rights [2]); in accordance with the Constitution of Ukraine, a convicted person shall enjoy all human and civil rights, with the exception of restrictions determined by law and established by a court verdict (Part 3 of Article 63) [3]; subordinate acts regulating the status of a convicted person are mainly issued by the law enforcement agencies, being able to realize their own interests in them, which do not always correspond to the constitutional principles in the field of execution of a punishment established by law. I. S. Yakovets adheres to this scientific position [17, 118].

Consequently, the legal norms, which determine the principles and content of restrictions of rights of people held in penal establishments, taken together represent a legal institution of restrictions of their rights to liberty; currently there is no clear system and continuity in restrictive norms in the scheme of "international legal norms – constitutional norms – norms of special criminal executive legislation".

3.3. Classification of restrictions of rights of convicts

Another important aspect that contributes to the disclosure of the essence and the peculiarities of restriction of rights of convicts is the classification analysis.

Comparative legal analysis of scientific and educational literature, as well as the provisions of the current legislation allows us to distinguish some of the most representative *classifications of restrictions of rights* of convicts, namely:

1) by type of rights, the use of which is limited:

a) personal property and non-property (restriction on the right to change the name – Part 6 of Article 295 of the Civil Code of Ukraine No. 435-IV from 16.01.2003); b) political (restriction on the right to be elected to the Verkhovna Rada of Ukraine – Article 76 of the Constitution of Ukraine from 28.06.1996); c) economic (termination of employment contract with people deprived of liberty – Paragraph 7 of Part 1 of Article 36 of the Labor Code of Ukraine No. 322-VIII from 10.12.71); d) social (termination of state social support while serving the sentence – Article 36 of the Procedure of allocating and paying the state social support for people who do not have the right to a pension, disabled people and the state social support for care, approved by the Order of the Cabinet of Ministers of Ukraine No. 261 from 2.04.2005); e) cultural (prohibition on participation in group activities for spreading culture among the masses to people sentenced to life imprisonment until the completion of 5 years of sentence – Paragraph 6 of Part 1 of Chapter XXXIII of the Penitentiary Routine Rules, approved by the Order of the Ministry of Justice of Ukraine No. 2186/5 from 29.12.2014); f) information (restriction of the right to exchange information (to enter any information, including sending letters, comments, signs, etc., and to register on websites) – Paragraph 3 of Part 7 of Article 110 of the Criminal Executive Code of Ukraine No. 1129-IV from 11.07.2003); g) others (restriction of the right on improved housing conditions for people sentenced to imprisonment for more than 6 years – Paragraph 4, Part 2 of Article 40 of the Housing Code of the Ukrainian Soviet Socialist Republic No. 5464-X from 30.06.1983);

2) by source of entrenchment:

a) international legal (in the exercise of his rights and freedoms, everyone shall be subject only to such

limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirements of morality, public order and the general welfare in a democratic society – Paragraph 2 of Article 29 of the Universal Declaration of Human Rights adopted and proclaimed by the Order *217* A (*III*) of the UN General Assembly from 10.12.1948); b) national legal (criminal executive law – prohibition to wear beard and moustache – Paragraph 5 of Part 4 of Chapter XXVII of the Penitentiary Routine Rules, approved by the Order of the Ministry of Justice of Ukraine No. 2186/5 from 29.12.2014; other branches of law – restriction of the right to public service – Paragraph 3 of Part 2 of Article 19 of the Law of Ukraine on the Sate Service No. 889-VIII from 10.12.2015);

3) by type of legal regulation: a) stipulated by the general-permit type of legal regulation; b) stipulated by the special-permit type of legal regulation;

4) by the form of restrictions of rights: a) regulatory restrictions of rights (indicate the specific content and scope of the restriction to be applied (for example, the prohibition to consume alcoholic drinks) and exclude the possibility of their change by the law enforcers; b) law enforcement restrictions (used by prison staff at their own discretion in accordance with the law (determining the length of placement in a disciplinary isolator) or contrary to it (placement in a disciplinary prison in the absence of sufficient grounds));

5) by type of administrative-legal regime of the law enforcement agency, in which the convicted person is: a) conditioned by the presence of the convicted person in the correctional center; b) due to the presence of the convicted person in an educational colony; c) due to the presence of the convicted person in the arrest house; d) due to the presence of the convicted person in a penal colony;

6) by source of restriction: a) legal (fixed in the law, applied only in accordance with the law); b) actual (not enshrined in the law, but they actually exist due to the isolation of the convicted person or they are inevitable in detention).

The study of these types of restrictions of rights gives grounds to indicate the following *main features of the legal nature of restrictions of rights* of convicts: 1) they are contained in both international and national normative legal acts; 2) available in various areas of domestic law from criminal executive law to civil law; 3) legal restrictions have specific rules for certain restrictions, in contrast to the actual restrictions; 4) the absence in the criminal executive law of a clear answer and even a substantive discussion of the theorists as to which type of legal regulation is applied, leads to an unambiguous interpretation of the existing restrictions of rights of convicts: from "everything that is not forbidden is allowed" to "permitted is only what is enshrined in a normative legal act"; 5) the concept of actual restrictions (rights restrictions imposed by isolation or detention) has gained considerable popularity and recognition both in national legal systems and in international standards, but it contains a dangerous component – the uncertainty what restrictions of rights are "inevitable" in a closed environment; 6) the division of restrictions into normative and law enforcement depends on whether the state authority has discretion to apply a restriction, or whether such restriction is carried out automatically.

4. Conclusion

Summarizing the above, we came to the conclusion that at the present stage of the development of Ukraine, more active reform is required for domestic law and legislation, as well as a revision of the conceptual provisions – the theory of restrictions of people sentenced to imprisonment. The basis of the next changes should be the principles and standards of international legal doctrine, legislation, judicial practice; transition from the actual to the normative concept of rights restrictions; minimization of subjectivity of executive bodies in imposing restrictions and prohibitions for people sentenced to imprisonment, during the period of their imprisonment, etc.

Summarized and presented in the work proposals can serve as a theoretical basis for the selection of directions for further research.

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І.В. Пивовар[1], Ю.І. Пивовар[2]

Поняття, нормативна регламентація та види правообмежень осіб, засуджених до позбавлення волі

Інститут кримінально-виконавчої служби, вул. Колекторна, 4, Київ, Україна, 01121
Національний авіаційний університет, проспект Космонавта Комарова 1, Київ, Україна, 03680
E-mails: [1]pani_pyvovar@ukr.net; [2]pyvovar_yuriy_2008@ukr.net

Мета: розроблення теоретико-правових основ та аналіз стану нормативної регламентації правообмежень щодо осіб, засуджених до позбавлення волі. **Методи:** методологічною основою дослідження стали системно-структурний, порівняльно-правовий, спеціально-юридичний та логіко-нормативний методи. **Результати**: визначаються ознаки правообмеження осіб, засуджених до позбавлення волі, й на підставі яких надається дефініція поняття такого обмеження; систематизується нормативно-правове забезпечення обмежень прав в'язнів. Встановлюється відсутність системності й спадкоємності обмежувальних норм в логіко-юридичній схемі «міжнародно-правові норми – конституційні норми – норми спеціального законодавства», а також обгрунтовується необхідність встановлення обмеження прав для осіб, засуджених до позбавлення волі, виключно законами. Визначаються раціональні критерії для класифікації правообмежень, а також формулюються характеристики обмежень прав засуджених. **Обговорення**: визначені авторами дефініція, сутнісні ознаки правообмеження осіб, засуджених до позбавлення волі, систематизація нормативно-правових джерел, що регламентують такі обмеження, а також класифікація видів правообмежень вказаної категорії осіб пропонуються для використання як теоретичної основи подальших наукових досліджень питань забезпечення прав і свобод осіб, засуджених до позбавлення волі.

Ключові слова: засуджені до позбавлення волі особи; класифікація правообмежень; міжнародно-правові акти; обмеження прав; правовий статус засудженого; теорія правообмежень

И.В. Пивовар[1], Ю.И. Пивовар[2]

Понятие, нормативная регламентация и виды правоограничений лиц, осужденных к лишению свободы

Институт уголовно-исполнительной службы, ул. Коллекторная, 4, Киев, Украина, 01121
Национальный авиационный университет, проспект Космонавта Комарова 1, Киев, Украина, 03680
E-mails: [1]pani_pyvovar@ukr.net; [2]pyvovar_yuriy_2008@ukr.net

Цель: разработка теоретико-правовых основ и анализ состояния нормативной регламентации правоограничений лиц, осужденных к лишению свободы. **Методы:** методологическую основу исследования составили системно-структурный, сравнительно-правовой, специально-юридический и логико-нормативный методы. **Результаты:** определяются признаки правоограничения лиц, осужденных к лишению свободы, основываясь на которых формулируется понятие такого правоограничения; систематизируется нормативно-правовое обеспечение ограничений заключенных. Устанавливается отсутствие системности й наследственности ограничительных норм в логико-юридической схеме «международно-правовые нормы – конституционные нормы – нормы специального законодательства», а также обосновывается необходимость установления ограничений прав для лиц, осужденных к лишению свободы, исключительно законами. Определяются рациональные критерии ограничений прав осужденных. **Обсуждение:** определенные авторами дефиниция, признаки правоограничения лиц, осужденных к лишению свободы, систематизация нормативно-правовых источников, регламентирующих такие ограничения, а также классификация видов правоограничений указанной категории лиц предлагаются для использования в качестве теоретической основы дальнейших научных исследований вопросов обеспечения прав и свобод лиц, осужденных к лишению свободы.

Ключевые слова: классификация правоограничений; международно-правовые акты; ограничения прав; осужденные к лишению свободы лица; правовой статус осужденного; теория правоограничений

Iryna Pyvovar. Ph.D. Associate Professor.
Department of General Legal Disciplines, Institute of Criminal-Executive Service, Kyiv, Ukraine.
Education: National Academy of Internal Affairs of Ukraine, Kyiv, Ukraine (2000).
Research area: public finance law, administrative law, criminal-executive system.
Publications: 70.
E-mail: pani_pyvovar@ukr.net

Yuriy Pyvovar. Ph.D, Associate Professor.
Head of the Constitutional and Administrative Law Department, Educational and Research Law Institute, National Aviation University, Kyiv, Ukraine.
Education: National Academy of Internal Affairs of Ukraine, Kyiv, Ukraine (1997).
Research area: legal regulation of public finances, administrative regulation.
Publications: 100.
E-mail:pyvovaryi@nau.edu.ua