



[Russia - Supreme Court, Appeal ruling in the Case no. 37-APU18-3](#)

The applicant, a stateless person, had been sentenced to 19 years of imprisonment in a strict regime facility as well as to payment of a fine and a limitation of freedom for two years (which is an imposition of certain restrictions of movement, such as leaving a specific municipality or going to certain public places, after release from a correctional facility). The applicant challenged the sentence on various grounds. The prosecutor's office filed an appeal in the applicant's favour, requesting to lift the imposition of a limitation of freedom as the relevant law does not apply to stateless individuals. The Supreme Court agreed with the prosecutor's office and ordered the amendment of the sentence.

Case name (in original language) : Апелляционное определение Верховного Суда Российской Федерации по делу № 37 АПУ18-3

Case status: Decided

Case number: 37-APU18-3 (Ru.: 37 АПУ18-3)

Citation: Supreme Court of the Russian Federation, Appeal ruling in the case no. 37-APU18-3, 26 April 2018

Date of decision: 26/04/2018

State: Russian Federation

Court / UN Treaty Body: Supreme Court of the Russian Federation

Language(s) the decision is available in: Russian

Applicant's country of residence: Russian Federation

Key aspects: Detention

Relevant Legislative Provisions:

- Art. 53 para. 6 of the Criminal Code of the Russian Federation

Facts

In 2010, Orel regional court found that the applicant was guilty of a minor assault, vehicle theft, theft and violent robbery and therefore sentenced him to 19 years of imprisonment in a strict regime facility, imposed a limitation of freedom for two years and ordered payment of damages. Limitation of freedom is a form of punishment provided for in Article 53 of the Criminal Code of the Russian Federation. It imposes restrictions of certain actions, particularly leaving one's place of residence during certain hours, changing one's place of residence without the authorities' consent, leaving a certain municipal district, attending certain public places and/or events, as well as an obligation to regularly report to authorities for registration. Under Article 53 para. 6 of the Criminal Code of the Russian Federation the limitation of freedom shall not be imposed on stateless individuals, as well as military personnel, foreign nationals and persons who have no place of permanent residence in the territory of the Russian Federation.

In his appeal, the applicant requested the sentence to be overturned due to various violations of procedural rules and because the sentence was unfounded and unjust. The applicant, however, did not request that the imposition of limitation of freedom should be overturned. Such request was rather filed by the interim prosecutor for Orel Region in his appeal submission (*апелляционное представление*). Under Art. 389.1 of the Criminal Procedure Code of the Russian Federation, a prosecutor is entitled to file an appeal submission against a sentence, including in favour of the sentenced person, if the prosecutor is of the opinion that the sentence violates substantive or procedural law.

Legal arguments by the applicant

As the applicant did not apply for the limitation of freedom to be lifted, he also did not make any legal arguments in that respect.

The interim prosecutor argued that the limitation of freedom cannot be imposed on the applicant as the applicant is a stateless person.

Legal arguments by the opposing party

Not applicable as there was no opposing party.

Decision & Reasoning

„The Judicial Collegium agreed with the arguments of the appeal submission to exclude from the sentence the imposition of the limitation of freedom as an additional punishment on the convicted person [applicant].

The court found and stated in the introductory part of the sentence that the [applicant] was stateless; at the same time, however, the court concluded that it was necessary to impose on the [applicant] for the offences committed an additional punishment in the form of a limitation of freedom. At the same time, the court did not consider that, by virtue of the provisions of Art. 46 para. 2 of the Criminal Code of the Russian Federation and of Art. 53 para 6 of the Criminal Code of the Russian Federation, limitation of freedom, as a basic and additional type of punishment, cannot be imposed on stateless persons.

Under such circumstances, the imposition of additional punishment in the form of limitation of freedom should be removed from the sentence.”

(„Доводы апелляционного представления об исключении из приговора назначения осужденному [applicant] дополнительного наказания в виде ограничения свободы Судебная коллегия находит подлежащими удовлетворению.

Судом установлено и указано во вводной части приговора, что [applicant] гражданства не имеет, вместе с тем, суд пришел к выводу о необходимости назначения [applicant] за совершенные преступления дополнительного наказания в виде ограничения свободы. При этом судом не учтено, что в силу положений ч. 2 ст. 46 УК РФ и ч. 6 ст. 53 УК РФ ограничение свободы. Применяемое в качестве как основного, так и дополнительного вида наказания, не назначается лицам без гражданства.

При таких обстоятельствах, назначение [applicant] дополнительного наказания в виде ограничения свободы подлежит исключению из приговора.“)

Decision documents

[Judgment](#)

Outcome

The imposition of the additional punishment in form of a limitation of freedom was removed from the sentence, while the rest of the sentence was upheld.

Links to other relevant materials related to the case (blogs, analysis, articles, reports, etc.)

Overview of the procedural history of the case at the website of the Supreme Court of the Russian Federation: <https://vsrf.ru/lk/practice/cases/9932286#9932286>

Third party interventions

n/a except for the interim prosecutor's appeal submission as described above.