

Compulsory Labor as a Social Compromise in Modern Criminal Law Relations

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ABSTRACT

The domestic criminal policy at the present stage of its development is oriented, in general, to the humanization of criminal legislation. One of the key means of ongoing humanization is the institution of criminal punishment, the norms of which determine the various types of measures of state coercion implemented against perpetrators of a crime. The state authorities, providing a policy of humanization of criminal legislation, are focused on introducing new types of criminal penalties, alternative to imprisonment, as well as on expanding the practice of appointing and applying punishments that do not imply isolation from society. Criminal penalty in the form of forced labor is officially declared an alternative type of criminal punishment, which in itself is a legal decision that is not characteristic of the traditional classical doctrine of the criminal punishment system. Analysis of the provisions of the criminal law, revealing the essence of forced labor as a criminal penalty, not related to the isolation of the convicted person from society, indicates a rather high degree of his severity, which exceeds the severity of imprisonment served in a penal colony. On the basis of the socio-legal and penitentiary characteristics of criminal penalty obtained in the course of the study, in the form of forced labor, a conclusion is formulated on the erroneousness of the legislative decision to include them in the modern criminal punishment system.

Keywords: *criminal policy, criminal penalty system, compulsory labor, an alternative to imprisonment, correctional center, compromise in criminal law, penal relations*

1. INTRODUCTION

Formal verification can reveal the unexposed defects in a Imprisonment for various terms or for life is a traditional type of criminal penalty, which is used mainly for persons who have committed serious and especially serious crimes. However, for various reasons, both socio-legal and organizational in nature, imprisonment is often imposed for less dangerous crimes. This state of affairs has led to the fact that Russia currently occupies one of the leading places in the world in the number of prisoners per 100 thousand of the country's population. According to official statistics provided by the Federal Penitentiary Service, as of January 01, 2000, more than 1 million people were detained in penal institutions. For 01.01.2020, these indicators decreased to 523,928 people (as of 01/01/2017, 529,078 people - Form 2-UIS. Report on the state of crime among persons held in UIS institutions for December 2016).

Both scientific research and the penitentiary practice of many countries of the world community have confirmed that imprisonment, especially used for a long period of time, negatively affects the formation of a law-abiding person. That is why persons subjected to the punishment of imprisonment have a tendency to commit repeated crimes. Given this fact, many civilized states are building a penitentiary policy based on the liberalization of criminal

liability forms. First of all, this is realized in the application of punishments that do not imply isolation of the convicted person from society.

The punishment system provided by the Russian criminal law includes a significant number of types of measures that do not imply isolation of the convicted person from society. Despite this circumstance, from 01/01/2017 there was introduced another criminal penalty that was not related to the isolation of the convicted person from society - forced labor. Obviously, following the development trends of international criminal law, the legislator explicitly indicated in Article 531 of the Criminal Code that forced labor is a punishment alternative to imprisonment. In the context of the implementation of the policy of humanizing criminal legislation, forced labor is designed to ensure a significant reduction of number of convicts serving criminal penalty in prisons. Herefrom forced labor is provided by many sanctions of articles of the Special Part of the Criminal Code.

The decision of including in a system of penalties in the form of forced labor can be considered as a kind of compromise in modern criminal legal relations between the state and society. A person sentenced to deprivation of liberty is not isolated from society in view of the

replacement of punishment with forced labor, which at the same time significantly limits a significant number of constitutional rights of a person and citizen. The legal characterization of forced labor as a punishment alternative to imprisonment, as well as the analysis of the current conditions for his departure, do not allow an unambiguous answer on the necessity and expediency of their introduction into the current criminal law.

2. STUDY METHODOLOGY

During the study, some methods, traditionally used in legal science, were used: dialectic, formal-logical, and the legal modeling method.

In particular, the dialectical method was used in the study of the Russian criminal and penal law in terms of determining the nature and characteristics of the execution of sentences in the form of forced labor.

The formal logical method of cognition was used to establish the degree of severity of forced labor and determine their place in the existing system of criminal penalties provided by Russian criminal law. Here was applied the method of legal modeling with the help of which the results of law enforcement activity on the appointment and execution of criminal punishment in the form of forced labor were predicted.

3. STUDY RESULTS

At the end of the study the following proposals of theoretical and applied value were formulated: firstly, the provisions of Article 531 of the Criminal Code contain an indication of the alternative labor force to criminal punishment in the form of imprisonment for a fixed term. This way the legislator created the prerequisites for establishing the legal dependence of forced labor on imprisonment, although both punishments are assigned as the main ones. In this part, there is a committed by legislator violation of the systemic principle of criminal punishments since each type of criminal punishment provided by Article 44 of the Criminal Code, must be isolated from other species and differ in the degree of severity of the legal impact on the convict.

Secondly, the content of forced labor includes a significant restriction on the complex of constitutional rights and freedoms of man and citizen, namely: freedom of choice of place of residence or stay, freedom of labor and property rights. This is why the degree of severity of forced labor clearly exceeds the severity of the criminal punishment in the form of imprisonment which is being served in a penal colony. This implies the fallacy of determining the place of forced labor in the current system of criminal punishment, as enshrined in Article 44 of the Criminal Code.

Thirdly, in accordance with the current criminal-executive legislation, the conditions of detention of persons sentenced to forced labor and the regime for the execution

of this punishment are comparable to imprisonment, which is served in a penal colony. This allows us to state the fact that in the Russian penal enforcement legislation there is no proper differentiation of the regimes for the performance of forced labor and imprisonment in a penal colony.

Fourthly, the execution of forced labor should be carried out in correctional centers, which are specialized penitentiary institutions. Correctional centers are far from being built in all constituent entities of the Russian Federation, as a result of which the punishment is carried out in separate colonies located on the territory of penal colonies and correctional colonies, functioning as a correctional center. This form of execution of criminal penalties in the territory of one penitentiary institution creates objective difficulties for ensuring the legal status of convicts sentenced to various types of criminal penalties, but who are kept in the territory of one penitentiary institution.

4. DISCUSSION OF RESULTS

1. In accordance with the current Russian criminal law, forced labor is one of the measures of state coercion, which can be applied only as the main form of criminal punishment. At the same time, forced labor is the only type of criminal punishment that is officially called an "alternative" to another type of criminal punishment - imprisonment for a fixed term. Such a designation of criminal punishment is not characteristic of the traditional legal description and therefore creates the conditions for doubts about the validity of the use of the term "alternative".

Many researchers of the institution of criminal punishment indicate that the alternative characterization of any criminal punishment takes place only in cases when it is compared with real imprisonment. This way A.S. Mikhlin saw a significant positive potential for property punishments, the use of which is appropriate for committing mercenary crimes instead of imprisonment for less dangerous crimes [1, p. 91].

V.M. Stepashin designates criminal penalties as an alternative to imprisonment, which, firstly, are not related to deprivation or restriction of freedom, and, secondly, have significant potential for corrective action on convicts. According to the author, such alternative criminal penalties are, first of all, mandatory and corrective labor [2, p. 140]. A similar opinion is shared by T.A. Korzhikova, who does not formulate the concept of alternative criminal punishments, but suggests to assign mandatory and corrective labor provided in the criminal law [3, p. 10, 175, 176].

Studying the differentiation of criminal sentences, V.D. Filimonov concluded that under certain conditions, fines, compulsory labor, corrective labor, forced labor and restriction of liberty "are considered as alternative to punishment in the form of imprisonment" [4, p. 42].

Ye.V. Khromykh demonstrates an excessively broad approach to the definition of alternative criminal

punishments, understanding them as “criminal law forms of state response to a crime that contain punitive properties for the convict, not related to his isolation from society and not destroying individual social ties”. To such alternative “punishments-forms” the author includes both the actual punishments and other measures of influence on the person, implemented within the framework of criminal liability: conditional conviction, criminal record, etc. [5, p. 8].

The categories of “alternative measures” and “punishments alternative to imprisonment” were fixed at the level of international law long before the norms of punishment in the form of forced labor were included in the content of Russian criminal law. In particular, the Committee of Ministers of the Council of Europe back in 1976 referred to legal alternatives to imprisonment as specific forms of implementing criminal liability in the form of a deferred conviction, setting a probationary period for a convicted person, as well as criminal punishments, the execution of which excludes a convicted person in places of imprisonment: penal fine, compulsory labor, partial imprisonment [6, p. 264-265]. The UN later adopts the Standard Minimum Rules for Non-custodial Measures, which consider alternative measures to ensure the offender's quick return to normal life in society, and their implementation does not imply imprisonment or detention (UN General Assembly Resolution 12/14/1990, No. 45/110). It was the expansion of the practice of applying these measures that were called as promising areas for improving the activity of the penal system [7], including in Russia [8, p. 32-42].

Given these circumstances, we can conclude that by the time the bill was discussed on the inclusion in the criminal law of the norm-novels on forced labor in science and in international law, a common understanding of the essence of “alternative criminal punishment” had already developed. This could be any criminal punishment imposed as the main one, which, according to the degree of restrictive influence on the convicted person, is milder than the punishment in the form of imprisonment, and the process of execution of which does not imply isolation of the convicted person from society.

This way an indication of the alternative nature of forced labor as a form of criminal punishment is redundant. The use of this wording in the law has led to the creation of an uncharacteristic legal dependency of forced labor on the imprisonment for no criminal punishment, although both punishments are assigned as the main ones. Attention is drawn to the committed violation of the principle of systematic criminal punishments, since each type of punishment provided for in Article 44 of the Criminal Code, must be isolated from other types and differ in the degree of severity of the legal impact on the convict. Only with this approach a uniform understanding of the degree of severity of a particular type of criminal punishment and justice in its appointment and execution are ensured.

2. By now both in science and in practice, there is a generally accepted opinion that Article 44 of the Criminal Code defines the system of criminal penalties. A sign of systematicity is expressed in the location of all the listed

types of punishments relative to each other in increasing degree of negative legal restriction on the convict: from penalty fine to the death penalty. Indirectly, this approach is also approved by the legislator. In the title of Article 44 of the Criminal Code does not contain an indication of the presented system of criminal penalties, however, in accordance with the general principles of sentencing, which are defined in Article 60 of the Criminal Code, the court, when choosing the type of punishment, is required to impose the least severe punishment if its implementation (execution or serving) in relation to the convicted person ensures the achievement of the goals provided for in the criminal law. On this basis, we can conclude that the legislator also determines the need to compare the types of different punishments with each other according to the degree of severity of repressive effects on the convicted person in the process of individualization of criminal liability. In modern science, although there is a dispute regarding the “grounds” [9, p. 82] or “factors” [10, p. 82] the formation of a system of criminal penalties, however, none of the researchers question the existence of a systematic construction of the types of criminal penalties relative to each other.

So the severity of a particular type of criminal punishment is determined by the amount of deprivation and legal restrictions that make up its essence and are implemented in relation to the convicted person. Since freedom of movement in space and the choice of a place of stay is one of the most valuable components of a person's legal status, all penalties associated with isolating a convicted person from society are a priori more stringent than other types of criminal punishments [11, p. 205-207]. In this regard, forced labor, being a punishment that does not officially imply isolation of the convicted person from society, is a less stringent measure of state coercion in comparison, for example, with imprisonment for a certain term.

The punishment novel in the form of forced labor by penitentiary scientists, in general, is assessed positively since it provides the possibility of refusing in some cases the use of deprivation of liberty [12, p. 832]. At the same time, the analysis of the content of forced labor casts doubt on the indisputability of the allegation of a reduced degree of severity of this punishment in comparison with imprisonment, especially if the latter is served in penal colonies. So, in accordance with the current criminal law, forced labor involves attracting a convict to work in places determined by institutions and bodies of the penal system. That is why this punishment significantly limits the constitutional right of a person and a citizen to freely dispose of his or her ability to work, to choose the type of activity and profession (Article 37 of the Constitution of Russia).

In the case of the imposition of a criminal penalty in the form of forced labor, in fact the convicted person is deprived of the indicated right for the term determined in the court verdict. Freedom of labor is replaced by a non-alternative obligation to carry out only that type of labor activity, which is imperatively determined by the bodies or institutions of the penal system. Ignoring this obligation

entails the application of various disciplinary or criminal law measures against the convicted person.

However, the deprivation of the right to free choice of the type of labor activity does not exhaust the essence of forced labor as a type of criminal penalty. During execution provided by Article 27 of the Constitution of the Russian Federation the right to free movement, choice of place of residence and residence, that is, the right of a person whose restriction is the essence and imprisonment are limiting. This right of the convicted person to other criminal penalties related to labor exposure is not fundamentally limited since mandatory and corrective work is performed at the place of residence of the convicted person. Criminal executive inspectorates agree on the places of execution of these sentences on the proposal of local authorities. Thus, the right of free movement, choice of place of residence and residence of the convicted person is limited only by the obligation to notify officials of the corresponding criminal-executive inspection about the settlement where he is planning to leave, and the length of stay on his territory.

The place of performance of forced labor, as well as the type of forced labor, is determined by the body or institution of the penal system. In accordance with applicable law, the execution of this punishment in the territory of a constituent entity of the Russian Federation in which the convict lived until the conviction entered into force is not guaranteed. In addition, the convicted person is kept in the specialized institution of the penal correctional system, the correctional center, the administration of which supervises his behavior throughout the entire period of serving the forced labor. Forced labor can also be carried out in correctional institutions, in which isolated sections functioned as correctional centers are created in the manner prescribed by law.

By a general rule, the convicted person is obliged to continuously be in the territory of the correctional center, including after hours, night time, weekends and holidays. The legislation provides exceptional cases of granting the convict the right to leave the territory of the correctional center, for example, as an encouragement from the administration for good behavior and conscientious attitude to work. But even in this case, the convicted person can leave the correctional center only on weekends and holidays, remaining within the municipality on whose territory the correctional center is located (Clause "c" of Article 6013 of the Penal Correction Code). It follows that, due to the specifics of the execution of forced labor, freedom of movement is significantly limited, and the freedom to choose the place of residence and residence of the convicted person is completely excluded, despite the official announcement of forced labor as a punishment that is not related to isolation from society.

But the essence of forced labor as a form of criminal penalty is not exhausted by the listed legal restrictions. In addition to the deprivation of the right to free choice of labor activity, restrictions on freedom of movement in space, convicted persons serving forced labor are subject to property deprivation, which limits the constitutional right of ownership guaranteed by Article 35 of the

Constitution of Russia. The property component of deprivation and legal restraint imposed on the convicted person to forced labor is provided in Part 5 of Article 531 of the Criminal Code withholding from the wage of the convicted person to the state income of an amount the amount of which is established by a court verdict in the range from five to twenty percent.

The importance of determining the exact amount of deduction from the wage of the convicted person is confirmed by the latest judicial practice of applying forced labor. This way by a decision of the Presidium of the Samara Regional Court, the decisions of lower courts were canceled, according to which the defendant was sentenced to forced labor for committing a crime, but the number of deductions that were to be carried out from the wage of the convicted person to the state's income was not established. On this basis, the Presidium of the Samara Regional Court concluded that the criminal penalty in the form of forced labor "was not actually assigned" (Resolution of the Presidium of the Samara Regional Court of 04/05/2018 in case No. 1-224/17).

The foregoing indicates that the content of the criminal penalty in the form of forced labor includes a combination of deprivations and restrictions of the constitutional rights to free labor, freedom of movement, choice of residence and place of residence, as well as guarantees of inviolability of property owned by a person by right of ownership. Comparing the content of punishments in the form of forced labor and imprisonment for a certain period of time, we can conclude that the punishment of imprisonment is, in certain cases, milder than alternative forced labor. It should be borne in mind that deprivation of liberty involves the legal restriction of a person convicted of freedom of movement in space, choice of place of residence and residence.

However, in accordance with the current criminal-executive legislation, the legal status of persons sentenced to the same type of criminal penalty - deprivation of liberty for a fixed term - may vary significantly depending on the type of institution in which the sentence is assigned: colony settlement, penal colonies with various types of regimes, prisons. Comparing statuses of convicts to forced labor and to imprisonment in a penal colony, it can be concluded that in the process of serving deprivation of liberty in a penal colony, the convicted person is in a more privileged position than a person serving a forced labor.

Serving imprisonment in a penal colony, convicted in accordance with Part 1 of Article 103 of the Penal Correction Code are obliged to work in places and at jobs determined by the administration of the colony settlement. Deprivation and legal restrictions regarding the right to freedom of choice of the type and place of work, as well as freedom of movement in space, place of stay and place of residence, are equivalent to these categories of convicts. Convicts held in a penal colony may actually be located outside the given penitentiary institution: current legislation allows the creation of "sections of colony settlements" on the territory of an organization that uses the labor of convicts (Part 31 of Article 129 of the Penal Correction Code). Similar conditions are provided for

those sentenced to forced labor. However, the sums transferred to the state's income are not withheld from the earnings of convicts of deprivation of liberty, that is, the property right of convicts to this type of punishment is not limited, and property deprivations and legal restrictions are not included in the content of the sentence of imprisonment.

Given the characteristics of the essence of the listed criminal penalties, we can conclude that the determination of the place of forced labor in the criminal penal system needs to be clarified. This type of punishment limits a greater number of constitutional rights and freedoms of the convicted person in comparison with the restrictions that

apply to prisoners sentenced to deprivation of liberty with the serving of this sentence in a colony settlement. The conditions of detention of convicts in correctional centers do not differ in principle from the conditions of detention in penal colonies. That is why there are no reasons to believe that those sentenced to deprivation of liberty in the process of serving their sentences are subject to additional deprivations and legal restrictions provided for by the penal legislation.

5. CONCLUSION

The social need for a compromise between ensuring the justice of the criminal law punishment and the humanization of criminal liability by introducing into practice the activities of bodies and institutions of the Russian penal system remains unsatisfied. Forced labor officially declared as non-custodial criminal punishment limits the legal status of the convicted person to a greater extent than the deprivation of liberty executed in a colony-settlement. In this regard, it would be advisable to abandon forced labor as a form of criminal penalty, and to implement the humanization of criminal policy through a significant easing of the conditions for serving a sentence of deprivation of liberty, expanding the practice of applying measures of criminal law and penal enforcement, as well as involving convicts to participate in penitentiary re-socialization programs.

REFERENCES

- [1] A.S. Mikhlin. Property punishments - an alternative to imprisonment for less dangerous crimes // *Soviet State and Law*. 1981. No. 6. P. 90-98.
- [2] V.M. Stepashin. The use of alternative punishments associated with involvement in labor // *Bulletin of the Omsk University. Series "Law"*. 2008. No. 2. P. 140-144.
- [3] T.A. Korzhikova. The legal status of convicts to alternative types of punishments related to compulsory involvement in labor: Dis. ... cand. legal sciences. Ryazan, 2010.236 p.
- [4] V. Filimonov. Problems of differentiation of types of punishments not related to deprivation of liberty and responsibility for evading serving them // *Criminal law*. 2013. No. 2. P. 42-46.

[5] E.V. Khromykh. Alternative to the imprisonment penal sanctions: theory and practice of appointment and execution: Abstract of the dissertation of the candidate of legal sciences. Rostov-on-Don, 2005. 28 p.

[6] Resolution of March 9, 1976, No. (76) 10 of the Committee of Ministers of the Council of Europe "On Certain Punitive Measures Alternative to Deprivation of Liberty" / Collection of documents of the Council of Europe in the field of human rights protection and the fight against crime / Comp. : Yu.N. Zhdanov. V.P. Zimin, T.N. Moskalkova, V.S. Ovchinsky, N.B. Slusar, V.V. Chernikov. M.: SPARK, 1998.388 p.

[7] K. Bullock, A. Bunce. The prison don't talk to you about getting out of prison': On why prisons in England and Wales fail to rehabilitate prisoners // *Criminology&Criminal Justice*. 2018. 17 September; DOI 10.1177/1748895818800743.

[8] A.N. Antipov, T.D. Makarenko. About some areas of improving the penal system of Russia // *All-Russian Criminological Journal*. 2018. V. 12. No. 1. P. 32-42; DOI 10.17150/2500-4255.2018.12(1).32-42.

[9] O.N. Nichugovskaya. Problematic issues of building a system of punishments in the modern criminal legislation of the Russian Federation // *Law and Politics*. 2007. No. 10. P. 78-84.

[10] A.V. Zvonov, O.N. Dyadkin. Factors in the formation of the criminal punishment system in modern conditions: brief analytical review // *Criminological journal of the Baikal State University of Economics and Law*. 2016. V. 10. No. 1. P. 82-89. DOI 10.17150/1996-7756.2016.10(1).82-89.

[11] Criminal penalty: social and legal analysis, systematization and development trends: monograph / by ed. of V.F. Lapshina. M.: Yurlitinform, 2018. 408 p.

[12] A.G. Kibalnik, P.V. Volosyuk, R.Z. Abdulgaziev. Russian dissertation research on criminal penalty: main trends in 2010-2019 // *Russian Criminological Journal*. 2019. V. 13. No. 5. P. 825-836; DOI 10.17150/2500-4255.2019.13(5).825-836.