

Principles Making Convicts Work

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Abstract: The legal regulation of work among convicts was different during various stages of Russian statehood. Corrective Labor Code of the RSFSR in 1970, stipulated the obligation of work for all categories of convicted persons including the persons with the first and second group disabilities and pensioners. They were deprived of vacation right and time record was not taken into account for convicts, except for the cases specifically provided by law. Convicts serving a sentence in a correctional labor colony of a special regime performed usually some heavy work. Due to the drastic reform of the correctional labor legislation and the adoption of RF Law “About the amendments and additions to the RSFSR labor code, the RSFSR Criminal Code, RSFSR Criminal Procedure Code” which was focused on international standards of prisoner treatment, the legal status of prisoners in Russia changed for the better in terms of prisoner socio-economic rights implementation. Operating time was considered as a time record, convicted were entitled to have a vacation, work became a voluntary one for disabled and pensioners, etc. Nevertheless, the principles of making convicts work remained unchanged. In this study, the basic principles of convict labor enforcement are doubted. Firstly, why prisons do not combine the task of convict correction with the task of profit making from their labor? Moreover, in 2015, the Federal Penitentiary Service of Russia plans to involve convicts serving imprisonment in penal colonies for the construction of a bridge on the Kerch Peninsula. Besides the issue of private prisons establishment in Russia is considered from time to time where one of the goals is to make profit. Secondly, why the labor in prisons should be mandatory, why not provide an experiment on a law basis concerning the principle of voluntary work among convicts?

Key words: Prisoners, the principle of compulsory labor, the principle of voluntary labor, income from labor, correction of convicts

INTRODUCTION

We should agree with the logical sequence of the legislator, manifested in the transfer of the basic funds for convicts correction sentenced according to the 2nd Part of the Article 9 of the RF Criminal Enforcement Code. Socially useful labor occupies the third place in this list after the mode of execution and punishment and educational work and not the second one, as it was before (Article 7 of the RSFSR Corrective Labour Code) when labor admitted as the foundation of the whole correction and re-education process among prisoners. Zubkov (2004) emphasizes that the policy and legislation in the field of sentence serving was shifted from a labor to a criminal enforcement aspect.

At that socially useful labor is considered as one of the most important means for convicts correction with recreation, disciplining, economic and incentive value. A lot of scientific literature is devoted to educational opportunities of socially useful work during the imprisonment (Zubkov and Ushakov, 1983).

In order to maintain law and order, the discipline and physical health of convicts, the latter should be encouraged to work. Even in pre-revolutionary Russia during the era of Peter I reign Gutsal (2005) emphasizes that Military article included the provision that the work of convicted persons should be used in the construction of castles, forts and fortifications. According to Litvishkov and Mitkina (2004), the work in prisons is the form of relations involving the engagement of convicts in the labor process, the development of their professional skills, moral qualities, psychological and practical readiness to the participation in socially useful work after their release from punishment.

MATERIALS AND METHODS

The RF Penal Enforcement Code, the RF Law “About institutions and bodies executing criminal penalties of imprisonment”, the Standard Minimum Rules for the Treatment of Prisoners and the internal regulations of correctional institutions on November 3, 2005 stated the

basic principles governing the procedure, grounds and forms of convict enforcement to work serving their sentence. So, Shmarov (1996) and Ponomarev (2012) refer to these principles:

- The submission of industrial activity in prisons to their primary task fulfillment, the correction of convicts
- Compulsory labor of convicts
- The combination of work and vocational training of convicts

Tolkachenko (2004) expands the list of principles even at the expense of three ones and adds:

- The need for convict labor terms compliance, arising from the legislation on occupation and health safety, the protection of social, penal legislation enforcement and conditioned by the regime requirements
- The legitimate variety of forms concerning convict enforcement to labor
- The encouragement to conscientious attitude to work, the accounting of this factor at the individualization of a convict correction degree

RESULTS AND DISCUSSION

The classification of principles proposed by Tolkachenko (2004) is considered by us as the most reasonable and expanded although not an indisputable. The production activity among convicts is stated in Part 5, of the Article 103 of the RF Criminal Enforcement Code and should not prevent the implementation of correctional facility basic tasks, the correction of convicts. Foinitsky (2000) wrote that little by little they began to use work as a corrective measure that may destroy the idle habits and give a prisoner the opportunity to earn a piece of bread honestly after the release. Idleness corrupts prisoners and their supervision becomes very difficult, without which the influence of a prison correctional measures is impossible. Prison authorities control busy prisoners much easier than idle ones.

To prevent possible abuses during the organization of work in prisons the provisions are sent stated in the minimum standard rules for the treatment of prisoners which state that “the interests of prisoners and their vocational training should not be subordinated to the purpose of profiting from prison production”. A similar requirement is contained in RF Law, “About institutions and bodies executing criminal penalties by imprisonment”

issued on July 21, 1993. Article 1 underlines that “the interests of convict correction do not have to pursue the purpose of profiting from their work”.

The question is how the production activities of convicts in a market economy prevents the performance of the main task which is the correction of convicted? We think that it does not prevent at all, as the making of a profit from their labor, on the contrary influences the re-socialization of a convicted person and his preparation to adaptation after release.

Earnings from work is the salary for a convict with various allowances provided by the labor legislation, the opportunity to receive higher education on a fee basis, to assist a family, relatives and friends, the rental or purchase of a house in the colony-settlement or outside and within a municipality, on the territory of which a correctional center is located during the service of a sentence in the form of forced labor, i.e., these are the factor, aimed at the correction of convicts.

The profit from work for one or another penal colony from the production activities of the federal state unitary enterprises is, first of all, the transfer of a profit part to the state budget which is a necessary and a natural measure. In Article 9 of the Law “About the institutions and bodies executing criminal penalties in the form of imprisonment” emphasizes that the incomes from the operations of penal institutions and the profits of the federal state unitary enterprises of the penitentiary system after the payment of obligatory payments to the respective budgets are spent in accordance with the budget legislation of Russian Federation. Secondly, it is the ability to improve the material-technical base necessary for the employment of prisoners and improve the material and social provision of convicts. All of this relates to the circumstances that make a significant impact on the process of convict correction and who are able to influence objectively and positively the behavior of a convicted person.

Considering all stated above the view of the American millionaire Henry Ford is an interesting one. Ford said: “while prisons exist, they may be precisely adapted to the general system of production and a prison will be a productive working community for the benefit of society and for the benefit of prisoners. A well organized prison should not only support itself but an inmate should be able to feed his family or if he has no family, to collect his earnings that will give him the opportunity to stand up after the release” (Shirvint, 1925).

It is worth mentioning that by 2013 about 10% of US prisons are commercial enterprises whose primary purpose is profit (Gulag, 2013). We also think that taking into account the modern realities the main task of correctional facilities (the correction of convicts) should be combined with the objective of profiting from the labor of convicts.

Every convict is obliged to work in places and jobs determined by the administration of correctional institutions (Part 1, Article 103 of the Executive Penal Code). The principle of compulsory labor as a primary means of a convict correction is secured at the national level as mentioned above as well as in international law (convention number 29 of the International Labour Organization “Regarding Forced or Compulsory Labor”, “the International Covenant on Civil and Political Rights”).

In due time, the view was expressed according to which it was proposed to remove from the law the obligation of convicts to work and strengthen the right of convicts to work. “The basic problem in the convict labor regulation area according to Gubenko (2005) is that the rules of criminal law do not contain the possibility of convicts serving a sentence to work as one of the punitive elements. After all, Article 56 of the RF Criminal Code does not state about the imprisonment with compulsory labor. Consequently, the labor of convicts is their right, not a duty”. From our point of view, there is a certain rationality in this. If a convicted person considers work as the punishment for a crime, the involvement of such a convicted person to labor causes resentment, resistance, violation of regime rules and it is impossible to talk about the correction in such a situation. So, the enforcement of convicted persons to labor is not necessary. The penalties for work evasion are not necessary. But, if convicts consider labor as some good with all the consequences (the system of rewards for a good work, salary, length of employment, pension, family assistance, repayment of damages caused by a crime and finally, parole) then such a labor activity will have a corrective effect. Those prisoners who willfully deviated from work and understood the tangible consequences of “voluntary occupational therapy” by themselves, would like to exercise their right to work consciously.

The rationality of the above-stated point of view is confirmed by the penal law, as prison authorities are obliged to involve convicts to work taking into account their gender, age, disability, health status and if possible, a profession, as well as on the basis of jobs availability, i.e., a legislator, along with the obligation of convicts to work ensures the right of certain categories of convicts to work in accordance with their age and state of health (Part 2, Article 103 of the Executive Penal Code).

The basic principle of work organization among convicts is the combination of work and training. This principle is implemented through compulsory professional or secondary vocational education according to the programs for convicted skilled workers or employees without a profession according to which a convicted

person may work in a correctional facility and after the release from it. But, this rule has an exception, according to which disabled persons with the disabilities of the I and II groups, patients with chronic diseases as well as convicted pensioners may (if they wish) to obtain a vocational training or vocational education in the absence of medical contraindications.

Convicts shall comply with the rules of labor protection, safety and occupational health, established by the RF labor legislation. Convicted are trained to handle high-risk sources (machinery, plant, mechanisms, machine tools, etc.) and are allowed to work only after a special briefing on safety. The responsibility for the protection of health and safety at the enterprises of correctional institutions is born by the chief of a colony and an enterprise director.

The industrial hygiene in prisons is the system of organizational measures and technical means to prevent or reduce the impact of production factors on convicted employees, which includes a set of sanitary, medical and epidemic control measures on working conditions improvement. On the basis of Part 3, Article 101 of the Criminal Executive Code, the prison administration is responsible for the fulfillment of established sanitary and epidemiological requirements for health protection of convicted persons.

The convicts, forced to labor by law a mandatory state social insurance and pension is provided. At that maternity allowances are paid maternity leave for convicted women regardless of their labor obligation performance and other circumstances.

According to legislation convicted in Russia are allowed to work at their own enterprises of correctional institutions and at the enterprises of different ownership forms. Until 2004, convicted were allowed to engage in self-employment activities. At present, on the basis of Part 1, Article 103 of the Criminal Executive Code, convicts are assigned to work in the centers of labor adaptation among convicts and production (labor) workshops of correctional institutions, at the Federal State unitary enterprises of the penal system and at institutions of other organizational and legal forms, located on the territory of correctional institutions and (or) out of them while ensuring an adequate protection and isolation of prisoners.

The principle of conscientious attitude to work encouragement is widely used in the penal legislation. The conscientious attitude to work is taken into account at the application of encouragement measures for convicted (Part 1, Article 113 of the RF Criminal Executive Code) during the transition of convicted from one imprisonment conditions to others, for example, the

Article 120, 122, 124, 132, 134 of the RF Criminal Executive Code in which as a rule the following formulation is used: "In the absence of penalties for the violation of the established order of punishment and at conscientious attitude to labor upon the completion of a certain sentence term, for example, under normal conditions of serving a sentence convicted may be transferred to a prison with mild restrictions".

It should be emphasized that the transfer of prisoners from one environment terms to the other serving is not an obligation for the administration of a prison but a corresponding right as the law itself applies the phrase "may be transferred". A faithful attitude to labor among convicts is taken into account, of course, during a parole and the replacement of some part punishment with a milder one.

Summary: After the analysis of the basic principles convict enforcement to work the following issue is raised "Is necessary to change these principles, the basic assumptions and a consistent position?" It seems to us that there is a need for this. Although, it is more difficult to change a principle than a rule but as an experiment in a separate region the principle of compulsory labor among convicted persons should be refused by giving them the right to choose. Besides, the main part of correctional facilities is the correction of convicts which should be combined with the task of making a profit from their production activity.

CONCLUSION

Based on the above-stated facts, we may conclude that in comparison with the RSFSR Corrective Labour Code in 1970, the legal regulation of the convict labor is carried out within the framework of liberalization and humanization of the penitentiary legislation. The labor of convicts (mandatory or voluntary one) remains one of the main means of convict correction, along with professional training. There is a need, in particular, due to the lack of jobs in the RF penal system for the opening of private prisons which provide one hundred percent employment of convicts.

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