The Regional Aspect of the Application of Mandatory and Correctional Labor

Elena K. GAZDANOVA
Ph.D. (Jurisprudence), Associate Professor
Associate Professor of the Department of Jurisprudence
North-Eastern State University
13, Portovaya str., Magadan, 685000, Russia
E-mail: fimida_omtga@mail.ru

Abstract

An article prepared on the topic "The regional aspect of the application of mandatory and correctional labor". The purpose of the study was to summarize data on the use of mandatory and correctional labor in the Magadan region, identify problematic aspects in the effectiveness of their implementation, and prepare proposals to improve the situation in this area. Analytical, comparative-legal, statistical, historical-legal and interviewing methods were used in the work. The results of the study include the collection of regional data on the execution of punishment in the form of obligatory and correctional labor in the Magadan region for 2018 and 9 months of 2019, as well as identifying factors that do not allow employees of the DEP FSA CEI FSEP of Russia in the Magadan region to ensure the timely implementation of the provisions of articles 49 and 50 of the Russian Federation criminal code.

Keywords: penalties, not related to isolation from society; regional aspect; mandatory labor; correctional labor; penal correction inspection.

Introduction

The concept of the development of the penal correction system of the Russian Federation until 2020 instructs that the use of punishments alternative to imprisonment for crimes of small and medium severity ensures a reduction in the level of criminalization of society, reducing the number of persons held in institutions of the penal correction system (The Russian Government, 2010). This approach, as noted by foreign observers, indicates the positive dynamics of the development of the Russian institute of criminal punishment, which is aimed at its greater humanization and democratization (Reid, 2015). The imposition and enforcement of mandatory and correctional work is also aimed at liberalizing the punishment system.

It is noteworthy that in one of the stages of legislation development which was regulating the appointment and execution of mandatory and correctional labor, they were called "public", "labor" work (Pitkevich, 2013). This legislative approach reflects and continues to reflect the essence of these types of penalties and their purpose as a mean of correction of a prisoner under part 2 of article 9 of the Penal Code of the Russian Federation (hereinafter – PC RF) is the adaptation to the socially useful work (The State Duma, 1997).

Modern legal regulation of terms and legislative aspects of the application of mandatory and correctional labor are prescribed in articles 46, 49, 50 of the Criminal Code of the Russian Federation (hereinafter - the criminal code) and Chapters 4, 7 of the Penal code of the Russian Federation. The provisions of these articles define the status of mandatory and correctional labor as the main types of punishment, usually imposed for crimes of small and medium severity (The Russian Government, 1996). This testifies to their self-sufficiency in implementing such goals of punishments as correcting the convicted person and preventing new crimes (part 2 of article 43 of
the criminal code of the Russian Federation). Norm of the article 80 of the criminal code of the Russian Federation expand the scope of mandatory and correctional labor, allowing their use in cases where they replace more severe types of punishment.

Data from judicial statistics, located on the website of the Judicial Department of the Supreme Court of the Russian Federation, indicate an extensive all-Russian practice of assigning the types of work under study in 2018 and in the first half of 2019. Thus, in 2018, there were 114,802 people sentenced to mandatory labor in Russia, and 54,747 to correctional labor (Judicial Department at the Supreme Court of the Russian Federation, 2018). In the first half of 2019, there were 24,358 cases of correctional labor and 48,369 cases of mandatory labor (Judicial Department at the Supreme Court of the Russian Federation, 2019). However, judicial activity in assigning mandatory and correctional labor does not mean that there are no factors that prevent the implementation of these punishments in practice or make such implementation difficult. These factors are of a legal, social, economic and practical nature, as well as related to the territorial features of a particular subject of the Russian Federation, its remoteness from the center and the development of infrastructure. All the above determines the relevance of the research topic.

Objectives of the study of regional problems on the application of the mandatory and correctional labor were: compilation of data on the application of obligatory and correctional labor on the territory of the Magadan region; identification of problematic aspects in performance of these punishments in the specified territory and offer possible ways to improve the situation in this sphere.

To implement these goals, the following tasks were formulated and outlined:

- provide data on the number of prisoners sentenced to mandatory and correctional labor in the Magadan region for 2018 and 9 months of 2019 with an indication of the age and gender of the groups of prisoners;
- indicate the reasons for the ineffectiveness of execution of correctional labor in the region for 2018 and 9 months of 2019 and suggest possible ways to improve the situation;
- provide data on the number of cases of malicious evasion of mandatory and correctional labor in the region and suggest ways to eliminate this problem;
- reflect and summarize the information received from employees of the Department of Execution of Punishment of the Federal State Administration of Criminal Executive Inspection of the Federal Service for Execution of Punishment (hereinafter – DEP FSA CEI FSEP) Russian Federation in the Magadan region, based on their practical experience in ensuring the execution of punishment in the form of mandatory and correctional labor;
- based on the norms of national and foreign legislation, suggest measures to improve the effectiveness of correctional and mandatory labor.

Methods

In the process of conducting the research and obtaining the necessary data, such methods of scientific knowledge as analytical, comparative – legal and statistical were used. Data collection and interviewing methods were actively used.

Results

So, according to the data requested from the DEP FSA CEI FSEP of Russia in the Magadan region, we obtained figures on the number of persons sentenced to obligatory and correctional labor for 2018, and 9 months of 2019 as the main form of punishment
and as a replacement for more strict types under the article 80 of the Russian criminal code, indicating the age and sex of prisoners. The figures for the number of persons sentenced to mandatory and correctional labor for 2018 and 9 months of 2019 are presented in the table below.

### Table 1. Indicators on the number of people sentenced to mandatory labor in the region for 2018 and 9 months of 2019

| Category of Accounting | 9 months of year 2019 | Year 2018 |
|------------------------|-----------------------|-----------|
|                        | Total | underage people | out of them by art. 80 PC RF | Total | underage people | out of them by art. 80 PC RF |
| Mandatory labo         | 325   | 4                | 440 | 9 |
| Out of them:           |       |                  |     |    |
| Women                  | 39    | 61               | 112 |
| Men                    | 286   | 379              | 372 |

A characteristic feature of the application of mandatory and correctional labor in 2018 and for 9 months of 2019 DEP FSA CEI FSEP in the Magadan region is the timeliness of attracting convicts to work. In general, those sentenced to mandatory work begin to do it no later than 15 days from the date the penal inspection received a copy of the sentence with an order (definition, resolution), as regulated in part 2 of article 25 of the penal code of the Russian Federation. In relation to those sentenced to correctional labor, this period is later – 30 days (part 2 of art. 39 PC of the Russian Federation), which is obviously related to the time spent on employment of unemployed convicts.

According to part 1 of article 49, 50 of the criminal code of the Russian Federation, the objects of mandatory and correctional labor are determined by local authorities in coordination with the criminal inspections. In order to implement this norm, resolution No. 1967 of the mayor's office of Magadan dated May 30, 2014 approved the list of organizations operating in the territory of the municipality "City of Magadan" (hereinafter-the List), in which those sentenced to mandatory and correctional labor are serving their sentences (The Mayor of the City of Magadan, 2011). This List...
includes various organizations of the city (municipal budget institution of the city of Magadan "GALUD", Municipal budget institution of the city of Magadan "Combine of green economy", Municipal unitary enterprise of Magadan city "Magadanteploset", etc.) that provide housing and communal services to the population, perform work on landscaping and arrangement of the city, cleaning the territory, etc. Such services and work do not require special skills, are performed no more than 4 hours a day in their free time from the main work and are achievable for any person with general working capacity.

Despite the fact that the List includes 59 organizations of the city that are potentially adapted to serving sentences in the form of mandatory labor, in fact, only 30 of them accepted those sentenced to labor for the period from January 2018 to September 2019. Correctional labor, according to the List, could be served in 57 organizations, but in fact, convicts serve their sentences in only 10 organizations. There is a problem of both national and local scale related to the employment of convicts to correctional labor, since the majority of those sentenced to them are unemployed citizens. However, the doors of not all institutions, designated for this purpose, are open. Employees of the DEP FSA CEI FSEP of the Magadan region note that "enterprises from the List are not ready and are not interested in working with convicts for correctional labor, because of their low social status, and therefore refuse to hire convicts, citing the lack of vacancies, or offer vacancies with very low income. In the latter case, the convict himself has no motivation to work, provided that from 5 to 20% of the income is subject to deduction" (FSA CEI FSEP of Russia in the Magadan region, 2019). Let's imagine a situation when a person sentenced to correctional labor receives an income less than the minimum wage level. From this income, the FSEP withholds a percentage for the execution of the sentence, then a tax deduction μα 13% is made, and from the remaining amount in the framework of enforcement proceedings, a percentage of the monetary amount intended for the repayment of alimony is also deducted, not to mention possible loans this person has. With this approach, correctional work becomes socially useful, almost free work, subject to full employment during the working day.

To be fair, we should note that other regions of our country also face problems with the employment of convicts to correctional labor. Despite a clearly regulated list of organizations that can provide vacancies and jobs for those sentenced to correctional labor, managers are looking for options not to do so. Thus, the Prosecutor's office of the Ryazan’s region Shatsk district tested implementation of the legislation in the activities of the branch in the Shatsky area of the FSA CEI FSEP of Russia across the Ryazan region in the case of people who the court appointed the punishment not related to deprivation of liberty. During the investigation it is established that in the CEI there a person registered under part 1 of article 157 of the criminal code by a magistrate court district № 58 of the Ryazan’s region Shatsk district to 6 months of correctional labor with 5% deduction of earnings in favor of the state income. On the 25.12.2016 the head of the CEI issued the convicted person an order for employment in LLC Rynok. On the 26.12.2016 after the contact with LLC Rynok the employment was denied in connection with the staffing of personnel. However, in accordance with part 1 of article 39 of the penal code, correctional labor shall be served to convicts at the main place of work, and convicts who have no permanent place of work, in the places designated by local governments in coordination with criminal executive inspections, but in the area of residence of the convicted person. By the resolution of the head of the administration of the municipality "Shatsky municipal district" dated 18.02.2016 № 01-03 / 8 LLC "Rynok" is included in the list of enterprises (organizations) for serving a sentence in the form of correctional labor. Municipal legal acts adopted by local self-government bodies are subject to mandatory enforcement throughout the territory of the municipality. For non-compliance with municipal legal acts, citizens, heads of organizations, officials of state authorities and officials of local self-government bodies are liable in accordance with Federal laws and laws of the subjects of the Russian Federation.
Thus, the convicted person was denied employment illegally. In order to eliminate the identified violations, a submission was made to the Director of LLC Rynok. The submission was reviewed, the prosecutor's demands were met, and one official was brought to disciplinary responsibility (The Prosecutor General’s Office of the Russian Federation, 2013).

Employees of criminal-executive inspections of individual RF subjects, as well as employees of the DEP FSA CEI FSEP in the Magadan region see a way out of the situation through amendments in federal and regional legislation, namely: legislatively regulate the issue of the number of jobs allocated by enterprises for serving sentences in the form of correctional labor; at the level of local governments provide mandatory assignment of quotas for this category of convicts; establish the responsibility for enterprises and organizations included in the List for refusing to provide a work place to a convicted person (administrative liability, fine). It is also proposed to involve representatives of small businesses (consumer cooperatives, commercial organizations, individual entrepreneurs) for employment of convicts to correctional labor. Since these market participants are not included in the mandatory list of organizations, it will be problematic and ineffective to oblige them to cooperate in a compulsory manner. It is thought that in this case we can talk about possible benefits and incentives, for example, reducing tax deductions from the income received.

This approach to the problem of employment for performing correctional work seems to us optimal. Otherwise, the lack of access to the workplace will negate the execution of the specified punishment, because there will be no earnings to keep it in the state's income.

Among other problems of convicts employment to correctional labor is noted: the lack of documents necessary for registration of labor relations; the presence of chronic (often infectious) diseases; lack of funds for medical examination when applying for work; lack of permanent or temporary registration at the place of residence or stay; conclusion of a contract with convicts on the initiative of the employer, which is of a civil nature and is regulated by the norms of civil law and not labor legislation, as a result – the refusal of courts to satisfy representations about replacing correctional labor with imprisonment.

Another factor that hinders the effectiveness of mandatory and correctional labor in practice is malicious evasion from serving them. Cases of evasion acknowledgement from obligatory and correctional labor by malicious violator regulated by part 2 of article 30 of the penal code and part 3 of article 46 of the penal code. In case of malicious evasion of the convicted person to a penal, mandatory works the court forwards a recommendation to replace correctional work to a mandatory imprisonment. The courts of Magadan and the Magadan region considered and satisfied the following number of submissions:

**Table 3. Indicators for replacing mandatory and correctional labor with imprisonment for malicious evasion**

| 9 months of year 2019 | Year 2018 |
|-----------------------|-----------|
| Replacement of mandatory labor with imprisonment | 37 | 47 |
| Replacement of correctional labor with imprisonment | 70 | 89 |

**Discussion**

Employees of the DEP FSA CEI FSEP note that for some categories of convicts who do not want to get a low-paid job or work for free, it seems more convenient to replace labor with isolation from society, in connection with which they deliberately avoid performing assigned jobs. Possible isolation and its terms regulated by the current criminal and penal legislation are not critical for the convicted person and are considered as a good alternative to socially useful forced work. This
deviation in the behavior of convicts is studied by modern domestic and foreign criminologists (Meldrum, Encalada, Connolly, 2016). Taking into account the above, there is a thought about the need to increase the term of imprisonment and the indication in the court's sentence for a specific term of imprisonment for evading work. In this regard, attention should be paid to the procedure for assigning and performing public works in Sweden. When assigning this type of punishment, the court decision specifies the term of imprisonment that the convicted person will have to serve if he will maliciously violate the conditions for serving socially useful work. 40 hours of community service is equivalent to 1 month of imprisonment, but the term of imprisonment should not exceed one year (Government Offices of Sweden, 1965). This approach seems quite correct and is approved by some foreign lawyers (Simons et al., 2018). On the one hand, the term of punishment prescribed in the sentence related to isolation from society has a psychological effect on the convicted person, encouraging him not to bring the situation to the point of replacing mandatory work with a more serious type of punishment. On the other hand, the term of imprisonment is quite challenging, so it is more appropriate, from the position of the convicted person, to be released from the imposed punishment much earlier.

Another foreign experience that deserves attention can be borrowed from France. Thus, under French criminal law, a sentence of community service cannot be imposed on a defendant who refuses to do so or does not attend a court hearing. The chairman of the court, before making a decision, notifies the defendant of his right to refuse to perform socially useful work and accepts his response (Code pénal, 2001). In this case, a private interest is taken into account – the interest of the convicted person, which can have a positive impact on the outcome of this type of punishment.

**Conclusion**

Summarizing the above, it can be noted that the practice of assigning and executing sentences in the form of mandatory work in the Magadan region for 2018 and 9 months of 2019 is more effective, since regional enforcement agencies are not obligated to employ such convicts and deduct a certain percentage from their earnings. Mandatory work is carried out free of charge, and there is no need to enter into an employment relationship with an employer and face problems of a registration nature. Correctional labor, on the contrary, causes such difficulties. If there is a wide list of organizations where such convicts could work, correctional labor is not properly served for a number of social, economic and other reasons described in the work. The solution is seen in the legal regulation of issues of employers’ responsibility, whose position is at odds with the criminal and penal enforcement legislation in terms of implementing the rules on the appointment and execution of punishment in the form of correctional labor.

**References**

Code pénal. (2001). Présentation des dispositions réglementaires du nouveau Code pénal: Circulaire du 18 janvier 1994 [in French], 583 -616.1.

FSA CEI FSEP of Russia in the Magadan region. (2019). About practice of application of punishment in the form of compulsory and correctional labor in the territory of the Magadan region: inform. a letter from 30.10.2019 № 49/TO/6/4-5680 /, 2.

Government Offices of Sweden. (1965). The Swedish Criminal Code adopted in 1962; entered into force on January 1, 1965. Retrieved from: https://www.government.se/government-policy/judicial-system/the-swedish-criminal-code/ (Accessed on December 10, 2019).

Judicial Department at the Supreme Court of the Russian Federation. (2018). Report on the number of people brought to criminal responsibility and types of criminal penalties for year 2018. Retrieved from: http://www.cdep.ru/userimages/sudebnaya_statistika/2018/k4-svod_vse_sudy-1-2019.xls (Accessed on October 20, 2019).
Judicial Department at the Supreme Court of the Russian Federation. (2019). Report on the number of people brought to criminal responsibility and types of criminal punishment for 6 months of 2019. Retrieved from: http://www.cdep.ru/userimages/sudebnaya_statistika/2019/k4-svod_vse_sudy-1-2019.xls (Accessed on November 10, 2019).

Meldrum, R.C., Encalada, T.M., Connolly, G.M. (2016). At the End of Their Rope A Research Note on the Influence of Parental Low Self-Control and Juvenile Delinquency on Parental Exasperation. *Youth Violence and Juvenile Justice*, 58.

Pitkevich. L.P. (2013). Correctional work. History, present and future. Retrieved from: https://cyberleninka.ru/article/n/ispravitelnye-raboty-istoriya-nastoyaschee-i-buduschee/viewer (Accessed on October 10, 2019).

Reid, M. (2015) Crime and Punishment, a Global Concern: Who Does It Best and Does Isolation Really Work? *Kentucky Law Journal*, 103(1), article 5.

Simons, R.L. et al. (2018). Incorporating routine activities, activity spaces, and situational definitions into the social schematic theory of crime. *Criminology*, 52(4), 655.

The Mayor of the City of Magadan. (2011). About the approval of the list of organizations operating in the territory of the municipality "City of Magadan", for the organization of work with citizens sentenced to serving sentences in the form of corrective labor or mandatory labor: resolution of the mayor's office of Magadan from 30.05.2014 № 1967. Retrieved from: https://old.magadangorod.ru/laws/11719-ob-utverzhdenii-perechnya-organizacij.html (Accessed on November 10, 2019).

The Prosecutor General’s Office of the Russian Federation (2013). The person sentenced to correctional labor was refused employment. *News of the Prosecutor's Office of the Russian Federation*. Retrieved from: https://sudact.ru/regular/doc/cQZE5OysxG6u/ (Accessed on December 10, 2019).

The Russian Government. (1996). Criminal code of the Russian Federation dated June 13, 1996. № 64-ФЗ [in Russian]. *Collection of legislative acts of the Russian Federation*, 25, 2954.

The Russian Government. (2010). The concept of development criminal-executive system of the Russian Federation until 2020: decree of the RF Government (October 14, 2010). *Collection of legislative acts of the Russian Federation*, 43, 5544.

The State Duma. (1997). Criminal executive code of the Russian Federation dated January 8, 1997. No. 1-ФЗ [in Russian]. *Russian newspaper*, 9.