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Forced Labor: Prospects, Limits and Risks of Development

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Abstract

Introduction: The Concept for the Development of the Penal System of the Russian Federation for the Period up to 2030 sets the task to significantly increase a number of convicts serving forced labor. *Purpose:* to analyze prospects for the fulfillment of this task, the possibility of changing rules for the appointment of forced labor established by criminal law. *Results:* the proposals on liquidation of penal settlements as a kind of competitor to forced labor are analyzed, and the conclusion about the prematurity of such a step is argued. Risks of hasty expansion of the use of forced labor associated with the deterioration of law and order in the locations of correctional centers are considered. It is concluded that the expansion of judicial practice of the use of forced labor can be carried out in two stages. At the first stage, it should be limited, first, to eliminating the alternative in assigning this type of criminal punishment, and second, to increasing a number of crimes providing for forced labor as a sanction along with imprisonment. Judicial practice will be given the opportunity for wider discretion in the appointment of forced labor, which will entail an increase in the number of convicts in correctional centers and a reduction in the number of convicts in penal colonies. At the second stage, it is reasonable to reform penal settlements complexly, within the framework of optimizing the entire system of criminal penalties and institutions that execute them. As part of this stage of the reform, forced labor should lose its specialized status of punishment only for able-bodied convicts. Accordingly, it is necessary to adjust the name of this punishment, which would cover all the punitive content of this punishment.

Keywords: forced labor; criminal punishment; correctional centers; convicts; penal settlements; restriction of freedom.

5.1.4. Criminal law sciences.

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Introduction

Forced labor as a type of criminal punishment was introduced into the Criminal Code of the Russian Federation by the Federal Law No. 420-FZ of December 7, 2011. The same law in the Penal Code of the Russian Federation regulated the conditions and procedure for the execution (serving) of this type of punishment. It can be said that this is the “youngest” criminal punishment that has joined the list of the Russian system of criminal penalties.

Forced labor has attracted attention of the legislative and executive authorities, as it has positive capacities of providing convicts with labor. The fact is that, quite a large part of the special contingent is not engaged in labor in places of detention. As shown by the results of the ninth special census of convicts and persons in custody, conducted in December 2022 (hereinafter referred to as the 2022 convict census), 66.9% of 92.8% of fully and partially able-bodied convicts in places of deprivation of liberty are provided with labor. More than a quarter of convicts do not work, with 14% due to the lack of work and 9.6% due to their constant refusals. At the same time, according to results of the same census, 97.6% of convicts are provided with labor in correctional centers, 1.4% do not work due to the lack of work and 0.6% refuse to work.

Meanwhile, the Russian economy needs an influx of workers. In January 2024, the lowest unemployment rate in the country was recorded (2.9%), while almost half of enterprises need to replenish their labor teams. Economists note that the causes of labor market tension in Russia are not unique. First, this is a natural decline in the population, which is not compensated by immigration: in the next five years, even taking into account immigration, the number of people aged 20–39 (the most productive cohort) will decrease by 4–5 million people and those aged 15–65 by 2.5 million people [1]. In addition, the conduct of the special military operation has diverted and will divert part of the workforce from productive work. At the same time, the task is to increase production of weapons, military equip-

ment and ammunition. Even greater economic tasks will have to be solved in accordance with the annual Address of the President of the Russian Federation to the Federal Assembly of the Russian Federation announced on February 29, 2024.

Research

With regard to the labor resource shortage forecast, as well as other socio-economic factors, the Concept for the Development of the Penal System of the Russian Federation for the Period up to 2030 (hereinafter – the 2030 Concept), provided for a multiple increase in the number of correctional centers and the number of convicts serving forced labor, as well as participation of the business community in their employment at enterprises. Convicts are to be engaged in construction of large facilities and work to clean up territories of the Arctic zone of the Russian Federation from pollution (production and consumption waste).

Based on the above-mentioned political attitudes, the number of convicts serving forced labor has gradually been growing up. Accordingly, the number of correctional centers and their sites opened both at industrial enterprises and at correctional institutions have increased.

According to the statistics of the Federal Penitentiary Service of Russia, as of January 1, 2023, there were 46 correctional centers and 321 areas of correctional centers, isolated areas functioning as correctional centers at correctional institutions. More than 20 thousand convicts served forced labor there, and the number of accommodation places exceeded 40 thousand. Moreover, the Federal Penitentiary Service of Russia and the Ministry of Justice of Russia plan to increase this figure to 80 thousand places in 2024 [2].

These indicators are hardly likely to be achieved. Let us analyze such possibilities in relation to different categories of convicts serving forced labor. According to the penal legislation, all convicts serving forced labor have the same legal status. At the same time, this does not mean that they do not differ in their demographic, criminal law and penal characteristics.

Thus, according to criminal law grounds, three categories of convicts serving forced labor can be distinguished. For the same categories, there are their own criminal law mechanisms for replenishing correctional centers and their sites with convicts:

1. Persons sentenced by courts to forced labor for the crimes committed (Article 53.1 of the Criminal Code of the Russian Federation).

2. Persons to whom imprisonment has been replaced by a milder punishment – forced labor – in accordance with Article 80 of the Criminal Code of the Russian Federation.

3. Persons serving forced labor on other grounds specified in criminal and penal legislation.

After the introduction of forced labor into effect, the legislator ignored regulation of the procedure for imposing this punishment by court verdict and focused on improving the grounds and procedure for sending convicts to correctional centers from correctional institutions to a greater extent.

Thus, the Federal Law No. 540-FZ of December 27, 2018 “On Amendments to Articles 53.1 and 80 of the Criminal Code of the Russian Federation” stipulates replacement of imprisonment with forced labor, if previously the court has imposed punishment in the form of imprisonment for a period of more than five years. In addition, the remaining period of forced labor can be more than five years. The same law in Article 80 of the Criminal Code of the Russian Federation provided for shorter terms to replace the punishment in the form of imprisonment with forced labor.

In order to encourage those sentenced to imprisonment to replace this punishment with forced labor, the legislator introduced in the Federal Law No. 200-FZ of June 28, 2022 “On Amendments to Article 79 of the Criminal Code of the Russian Federation” the following provision: for a convict whose unserved part of the punishment was replaced by a milder type of punishment, the term of punishment, after actual serving of which conditional early release may be applied, is calculated from the begin-

ning of the term of serving the sentence imposed by the court (Part 3.2 of Article 79 of the Criminal Code of the Russian Federation).

Since all these amendments (especially the last one) encouraged convicts to serve forced labor instead of imprisonment, the judicial practice of replacing imprisonment with forced labor was significantly expanded. So, according to the 2022 convict census, correctional centers and areas were occupied by 66.9% of convicts whose imprisonment was replaced by forced labor. Slightly more than a quarter (26.4%) were sentenced to forced labor by court verdict, the rest of the convicts (6.7%) were assigned forced labor on other grounds. It seems that this ratio has not changed to the present day.

If the situation with the substitution of punishment in quantitative terms showed a positive trend, then the proportion of those sentenced to forced labor by court verdict remained almost unchanged. The federal executive authority, which performs functions of developing and implementing state policy and regulatory regulation in the field of execution of criminal penalties, proposed a comprehensive solution to the situation. The relevant draft federal laws on amendments to the Criminal Code of the Russian Federation and the Criminal Code of the Russian Federation were submitted for discussion by specialists in September 2023.

The draft law on the amendment of the Criminal Code of the Russian Federation stipulated adjustment of the procedure for imposing punishment in the form of forced labor. In our opinion, nowadays the appointment of forced labor by judges is hindered by an “exotic” procedure for the appointment of forced labor provided for in the Criminal Code of the Russian Federation. In accordance with Part 2 of Article 53.1, the court must first appoint (and therefore justify this appointment in the sentence) a punishment in the form of imprisonment, and then come to the conclusion that it is possible to correct the convicted person without actually serving the sentence in places of deprivation of liberty. At the same time, this conclusion must also be justified. This algorithm follows from the Reso-

lution of the Plenum of the Supreme Court of the Russian Federation No. 58 of December 22, 2015 “On the Practice of Assigning Criminal Punishment by the Courts of the Russian Federation” (as amended by the Plenum resolutions No. 56 of November 29, 2016 and No. 43 of December 18, 2018). In accordance with Paragraph 22.2 of this document, when passing a guilty verdict, the court is obliged to resolve the issue of whether there are grounds for replacing punishment in the form of imprisonment with forced labor in the cases and in accordance with the procedure established by Article 53.1 of the Criminal Code of the Russian Federation. If there are such grounds, the court must prove the possibility of correcting a person not in places of deprivation of liberty and applying provisions of Article 531 of the Criminal Code of the Russian Federation. The operative part of the sentence must first indicate the imposition of punishment in the form of imprisonment for a certain period and then replace imprisonment with forced labor.

Such a contradictory bifurcation of judicial discretion in relation to the same defendant and the same criminal act, with the presence of the same mitigating and aggravating circumstances, constrains the appointment of forced labor, since judges are afraid of overturning the court’s verdict with all the negative consequences for their official career. Therefore, it is necessary to support the amendment of Part 1 contained in the submitted draft law and the invalidation of Part 2 of Article 53.1 of the Criminal Code of the Russian Federation, as a result of which the alternative of assigning forced labor will be eliminated. It should be noted that the alternative to the appointment of forced labor has been repeatedly criticized in the legal literature [3, pp. 15–16; 4].

At the same time, the draft law under consideration proposes to include punishment in the form of forced labor in the sanctions of a fairly large number of articles of the Special Part of the Criminal Code of the Russian Federation. It seems that the list of such articles could be expanded to include not only minor and moder-

ate crimes, but also serious crimes. At the same time, simultaneous exclusion of punishment in the form of imprisonment from the same sanctions is fully justified. First, it narrows the possibilities of individualizing punishment, which will be negatively perceived by both the judicial community and law enforcement agencies. Second, such an extensive campaign to humanize punishment (it is proposed to exclude imprisonment from 50 crimes) is unlikely to be positively perceived by public opinion. If the issue of excluding deprivation of liberty is to be resolved, then this should be done after discussion of each individual corpus delicti, and not of 50 compositions at once. For example, it provides for the exclusion of the possibility of imposing imprisonment for libel (parts 2–5 of Article 128.1 of the Criminal Code of the Russian Federation). Meanwhile, the issue of punishment, especially for qualified cases of defamation, at one time caused quite an acute public controversy. Given the negative public response to the “PussyRiot” dancing in front of the altar, which took place in 2012 in Moscow at the Cathedral of Christ the Savior, a similar situation may arise if punishment in the form of imprisonment for violating the right to freedom of conscience and religion is excluded (Article 148 of the Criminal Code of the Russian Federation). Such examples can be given for almost every type of crime, from the sanctions of which it is proposed to exclude punishment in the form of imprisonment.

The draft laws on amendments to the Criminal Code of the Russian Federation and the Penal Code of the Russian Federation provided for a very radical, revolutionary measure, such as elimination of panel settlements, which are certain competitors of correctional centers.

It is argued that, in addition to economic interests of the state and convicts themselves, the theory of criminal and penal law (in Soviet times, the theory of correctional labor law) justifies the fact that there is no isolation from society in penal settlements; therefore, not imprisonment is executed in this case, but other punishment without isolation of convicts from

society. Some scientists believe that this should be a punishment in the form of restriction of freedom [5, p. 169–173], classifying forced labor as a kind of “fifth wheel in a cart”, meaning by the cart the system of criminal penalties as a whole [6, p. 23]. Others call it “sending to a correctional center” [7, p. 125]. According to some researchers, both penal settlements and correctional centers can function simultaneously and categories of convicts are redistributed between them [8, p. 15]. Others prove the need to preserve panel settlements unchanged [9, pp. 18–19]. Some scientists strongly believe that, especially after the entry into force on January 1, 2017 of criminal punishment in the form of forced labor, forced labor [10, pp. 49–50; 11] should be executed in penal settlements. While paying tribute to these positions of scientists, we find a rather large and thorny distance between theoretical conclusions and their practical implementation. And this is clearly demonstrated by the idea of liquidation of penal settlements in the above-mentioned draft laws.

First, according to results of the 2022 convict census, about 27 thousand convicts are serving their sentences in penal settlements: about 45% of them have been transferred to a penal settlement from correctional facilities for positive behavior; 43% are convicted for the first time for crimes of minor and medium gravity, as well as for serious crimes, and 12% – for crimes committed by negligence. It was proposed to put into effect the submitted draft laws on January 1, 2025. However, the draft laws do not answer the question of where such a mass of convicts will disappear to this date. Naturally, some convicts will be released after serving their sentence, on parole or on other grounds, but some will remain, since they will not be eligible for early release on formal or material grounds. In addition, until January 1, 2025, panel settlements will be filled (the draft laws do not prohibit courts to appoint imprisonment with serving in a panel settlement at this time). It is possible to informally adjust judicial practice by bringing to the judges a recommendation not to impose a sentence of imprisonment with its serving in

panel settlements. At the same time, a similar recommendation could be addressed to judges regarding the non-application of transfer from correctional facilities to panel settlements. However, such an opportunity actually means that judges are forbidden to administer justice under the current criminal law, which raises great doubts about its implementation.

Second, the exclusion of settlement colonies from the system of correctional institutions without additional regulation of a number of issues in criminal and penal legislation is also questionable. It is necessary to take into account the specialized nature of punishment in the form of forced labor, namely, that they are designed for able-bodied convicts. Panel settlements do not have this quality. Therefore, the question arises: to which correctional institutions convicts with limited or complete disability who previously served their sentences in a penal settlement would be sent. According to results of the 2022 convict census, in panel settlements, 4.5% of the convicts transferred from correctional facilities for positive behavior are disabled; 4.6% of those are convicted of intentional crimes, and 7.6% – reckless crimes. Moreover, among the latter category, almost half (3.4%) are disabled, which is not surprising, since they were imprisoned, as a rule, as a result of road accidents caused serious health consequences not only to victims, but also to themselves. Upon liquidation of panel settlements, these persons will be sent to closed correctional facilities of general or strict regime, depending on the fact of reserving imprisonment. For such differentiation of convicts depending on their ability to work, additional arguments are needed, especially in terms of ensuring the principle of equality of convicts before the law.

Third, there are economic problems of liquidation of panel settlements. Due to the specifics of production and location of a significant part of these institutions, correctional centers are unlikely to be opened everywhere instead of panel settlements. Therefore, the closure of panel settlement will require economic expertise and retraining of convicts in new profes-

sions, since the distribution of convicts in panel settlements and correctional centers does not coincide. Thus, according to results of the 2022 convict census, one in three in panel settlements is engaged in the economic maintenance of correctional institutions, while in correctional centers it is only one in thirty. In penal settlements, one in thirty convicts is engaged in construction, while in correctional centers – one in seven.

The general direction of expanding the use of criminal punishment in the form of forced labor is provided for in the 2030 Concept. When implementing this provision of the directive document, it is necessary to take into account risks of complication of the criminal situation in the locations of correctional centers. It is worth recalling the Soviet experience of applying a suspended sentence to imprisonment with mandatory labor (1970–1993) and conditional release from prison with mandatory labor on construction sites of the national economy (1964–1993). Initially, high hopes were placed on these measures of criminal legal influence, the number of convicts at the construction sites of the national economy grew exponentially. However, after complaints from citizens living in the areas of deployment of special commandant's offices about the lack of proper supervision over the behavior of probationers (released) in 1984, the practice of probation and especially conditional release with mandatory labor was significantly reduced.

There is also such a danger with a forced increase in the number of convicts in correctional centers. As we noted earlier [12, pp. 228–229], human rights defenders are already paying attention to risks of compromising forced labor.

Thus, the Commissioner for Human Rights in the Moscow Oblast in the 2021 annual report specifically drew attention to complaints from citizens living in settlements where correctional centers are located. Local residents express reasonable concerns about the convicts' right to leave correctional centers and the possibility of their committing offenses. The shocking case, which was reported by the federal media,

occurred in early December 2021 in Chekhov, near Moscow. A convict G., serving a sentence of forced labor in the correctional center there, previously convicted several times, including for committing serious crimes, came to Moscow and abused a girl. Taking into account the already existing facts of illegal actions on the part of this category of convicts, it is reasonable to make the following amendments to the legislation: not to apply punishment in the form of forced labor against persons who have recommitted intentional crimes; not to use the opportunities provided for by Article 80 of the Criminal Code of the Russian Federation in terms of replacing the remaining part of the sentence that has not been served with a more lenient type of punishment, in relation to persons who have committed particularly serious crimes, crimes with the recurrence of intentional crimes and crimes against a minor in the field of sexual integrity and sexual freedom of the individual" [13]. Further, new concerns about the expanding judicial practice of forced labor were voiced at the All-Russian Coordination Meeting of Russian Human Rights Commissioners on November 24, 2021.

Conclusion

When implementing provisions of the 2030 Concept, a certain sequence should be followed, otherwise the costs of a hasty approach may compromise the very idea of more frequent use of forced labor by courts.

It seems that the expansion of judicial practice of the use of forced labor can be carried out in two stages. At the first stage, it should be limited, first, to eliminating the alternative in assigning this type of criminal punishment, and second, to expanding the scope of crimes providing for forced labor as a sanction along with imprisonment. Judicial practice will be given the opportunity for wider discretion in the appointment of forced labor, which will entail an increase in the number of convicts in correctional centers and a reduction in the number of convicts in penal settlements.

At the second stage, a complex reform of panel settlement is possible, which cannot

consist only in deciding the fate of panel settlements exclusively, but should be focused on optimizing the entire system of criminal penalties and institutions that execute them. As part of this stage of the reform, forced labor should lose its specialized status of punishment only for able-bodied convicts. Accordingly, it will be necessary to adjust the name of this punishment, which would cover all the punitive content of this punishment. The most successful name is restriction of freedom in a correctional cen-

ter. In this case, engagement of able-bodied convicts in work could be carried out through the establishment of the obligation to work in the order of serving this sentence, as it is currently regulated in relation to deprivation of liberty. Only then it will be possible to raise the issue of uniting correctional centers and panel settlements.

The restriction of freedom currently provided for in the Criminal Code of the Russian Federation may remain unchanged.

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