

Original article

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Judicial Activity in the Field of Execution of Alternative Punishment in the Form of Compulsory Labor (Organizational and Legal Aspect)

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Abstract

Introduction: the author proposes measures for improving legal regulation of the execution of punishment in the form of compulsory labor and considers points of view of some experts in the field of structural and functional analysis of criminal, criminal procedure and penal legislation that no matter how perfect criminal proceedings and criminal law norms are, the real results of the impact on an offender can be assessed only after his/her conviction, during the period of execution of a criminal sentence. The success of previous stages, regulated by criminal and criminal procedure legislation and closely related to law enforcement and judicial activities in the field of execution of punishment in the form of compulsory labor, depends on the effective implementation of the procedure and conditions for serving a criminal sentence established by law. Studying various approaches to the legal regulation of complex influence measures in relation to those sentenced to compulsory labor who have committed offenses of the same legal nature in the field of execution of punishments in the form of compulsory, correctional, and forced labor, the author dwells on the problems of improving organizational and legal foundations of interaction between courts and criminal executive inspections when considering ideas on the substitution of the unserved part of the punishment with a more severe penalty in order to prevent repeated crimes. *Methods:* dialectical, formal legal, systematic methods, methods of analysis, synthesis, deduction, interdisciplinary legal research, content analysis. The author considers procedural activities in the field of execution of punishment in the form of compulsory labor and identifies subjects of these activities, such as judges and other participants of the judicial process (criminal executive inspections, employers, representatives of law enforcement agencies, etc.). The topic of the scientific work corresponds to the current Fundamental research program for 2021–2030 (executors of the Federal Penitentiary Service of Russia and other interested representatives of the law enforcement system), where in the section “Fundamental and exploratory scientific research” it is planned to consider “Criminology and the penitentiary system: Development of alternative social response systems aimed at preventing and suppressing criminal behavior in society”. *Results:* it is proposed to introduce appropriate amendments to legislation that will help improve effectiveness of the organization of specialized government agencies in the field of compulsory labor enforcement. The necessity to improve the organizational and legal framework for cooperation between criminal executive inspections and courts in order to prevent repeat crimes is emphasized.

Conclusion: among the main reasons for repeated crimes and other violations of the order and conditions of serving compulsory labor on the part of convicts, scientists and practitioners highlight insufficient effectiveness of the application of measures of influence on offenders, which is caused, among other things, by imperfect legal regulation of the interaction between courts and specialized state bodies executing alternative punishments.

Keywords: judicial activity; crime prevention; alternative punishments; compulsory work; organizational and legal bases; criminal executive inspections; law enforcement activities.

5.1.2. Public law (state law) sciences.

5.1.4. Criminal law sciences.

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Introduction

The analysis of Russian constitutional and criminal procedure legislation and conclusions of the expert community shows that there is no definition of the concept of “judicial activity” in the normative legal acts regulating certain issues of the courts’ activity. This concept is most often used in the legal literature either as a branch of study implemented in the specialist and postgraduate programs of the higher education system, or as an independent category that differs from concepts of “judicial power” and “justice”, since the latter is a type of judicial activity, or when it comes to criteria for the effectiveness of judicial activity in the sphere of execution of criminal penalties [1, p. 122].

In turn, judicial activity consistently advocates for a broader application of non-custodial punishments. In order to implement the principles of humanization and justice, the number of people sentenced to imprisonment has more than halved over the past 15 years. Compulsory work occupies the third place in the system of punishments, after imprisonment and probation, they are used twice as often as correctional labor and three times as often as restrictions on freedom, which indicates that the process of assigning and executing punishment in the form of compulsory work is in the focus of judicial activity. It is rightly noted in the legal scientific literature that a person sentenced to compulsory labor while serving a sentence is engaged in socially useful activities thus satisfying urgent needs of the society. Therefore,

the mandatory nature of socially useful activities of the convicted person pursues the goal of restoring social justice, while additional duties and restrictions imposed on him/her contribute to the achievement of the goal of correction [2].

The main point of view is the statement that, in accordance with Article 46 of the Constitution of the Russian Federation, every citizen is guaranteed judicial protection of his/her constitutional rights and freedoms. In this case, judicial activity in the form of the administration of justice differs significantly from the law enforcement activities of internal affairs bodies, bodies and institutions executing punishments, and the prosecutor’s office.

So, judicial activity is an orderly set of actions of courts that are part of the judicial system of the Russian Federation (represented by judges and court staff), carried out in procedural forms for the purpose of administering justice, as well as aimed at organizing the administration of justice and increasing the accessibility and effectiveness of judicial protection.

The study is devoted to the analysis of the main type of judicial activity, i.e. procedural activity in the field of execution of punishment in the form of compulsory labor, the subjects of which may be judges and other participants of the judicial process (criminal executive inspections, employers, representatives of law enforcement agencies, etc.). In our work, we do not specifically consider organizational and administrative issues of judicial activity since it is the subject of research in a different field.

The essence of judicial activity is realized through its principles, which determine the form and content of a particular activity. Despite the specifics of criminal justice principles at the stage of execution of a sentence, judicial activity in the field of execution of sentences without isolating the convicted person from society in general and punishment in the form of compulsory labor in particular is fully covered by such principles as competitiveness, publicity, independence, the language of judicial proceedings, and the administration of justice only by the court [3, p. 375]. Thus, judicial activity in the field of execution of punishment in the form of compulsory labor is carried out on the basis of principles that ensure effective implementation of the tasks of the state criminal policy.

Research

The legal basis of judicial activity in the field of execution of punishment in the form of compulsory labor is the Constitution of the Russian Federation (Chapter 7, articles 118–128), Federal Constitutional Law No. 1-FKZ of December 31, 1996 (as amended of April 16, 2022) “On the Judicial System of the Russian Federation” (as amended and supplemented, enacted as of January 1, 2023), and the Criminal Procedure Code of the Russian Federation. In particular, Article 397 of the Criminal Procedure Code regulates the issues to be considered by the court when executing a sentence of compulsory labor, including substitution of punishment in case of malicious evasion from serving it by forced labor in accordance with Article 49 of the Criminal Code of the Russian Federation or imprisonment for a certain period in accordance with current legislation. In accordance with Part 1 of Article 398, the execution of compulsory labor may be postponed by the court for a certain period if there are the following grounds: a) if the convicted person has a disease that prevents him/her from serving this sentence, then execution of the sentence may be postponed until the convict recovers, if there is a conclusion from the medical commission; b) if the person sentenced to compulsory labor is pregnant, is raising a minor child, or if the person sentenced to compulsory labor is the sole parent of a minor child, execution of the sentence may also be postponed for a period until the child reaches the age of fourteen; c) for those sentenced to compulsory labor who have

serious consequences or threats of their occurrence for him or his close relatives caused by fire or other natural disaster, serious illness or death of the only able-bodied family member, or other exceptional circumstances, the court may suspend execution of the sentence for a certain period of up to six months.

It is worth mentioning that this measure of criminal procedure legislation aimed at humanizing punishment leads to convict’s correction and family restoration, and guarantees social and legal protection of parents and their children. The institution of postponement of the execution of a sentence is regulated by the norms of criminal procedure legislation and is decided by the court, which considers a petition of the convicted person or his/her legal representative, close relatives, defense counsel, or a recommendation of the prosecutor.

Article 20 of the Criminal Code of the Russian Federation regulates types of judicial control over the performance of compulsory work. So, the court is entrusted with the function of monitoring the execution of punishment in the form of compulsory labor in resolving issues specified in Article 397 (with the exception of the cases specified in sub-paragraphs 1 and 18) and Article 398 of the Criminal Procedure Code of the Russian Federation. It should be noted that in accordance with criminal procedure legislation in the field of consideration of complaints and applications, the courts are required to consider complaints of those sentenced to compulsory labor and their representatives about actions of employees of criminal executive inspections. In addition, these normative legal acts regulate such a form of judicial control over the performance of compulsory labor as the obligation of criminal executive inspections to notify the court that has passed a verdict about the beginning and place of serving the punishment in the form of compulsory labor by a convict [4, p. 10].

Types of judicial control over the performance of compulsory labor established by penal legislation require a thorough analysis of the legal regulation of activities of criminal executive inspections in the field of their interaction with courts, local governments, enterprises and organizations where those sentenced to compulsory labor are serving their sentences, since the effectiveness of achieving the goals

of the punishment in question depends on this interaction.

Practice shows that some of those sentenced to compulsory labor commit repeated crimes after being registered with the criminal executive inspection [5, p. 126]. Experts (representatives of science and practitioners) associate it with insufficient effectiveness of measures of influence applied to convicts, since legal regulation of such measures is imperfect.

Article 29 of the Penal Code of the Russian Federation establishes two types of liability of persons sentenced to compulsory labor for violating the procedure and conditions of serving the sentence: a) warning of responsibility; b) substitution of punishment with a more severe type of punishment for malicious evasion from serving compulsory labor. What is more, criminal executive inspections are required to submit to the court a submission on the replacement of compulsory labor with a more severe type of punishment in the case of malicious evasion from serving compulsory labor. The analysis of current criminal, criminal procedure, penal legislation and law enforcement practice indicates the existence of problems in this area of judicial activity, especially in the interaction between courts and criminal executive inspections. In general, over the past three years, almost every second petition of the criminal executive inspection (58% of the total number of petitions sent) has been rejected by the courts, and the proportion of petitions unsatisfied by the courts is growing. Almost every second (about 40%) submission on substitution of punishment has been refused. The reason for the problems lies in weak organization of the work of criminal executive inspections in the preparation of relevant documents and an insufficient level of professional training of employees of these institutions. To solve these problems, methodological assistance to law enforcement agencies is needed to ensure more effective execution of punishment in the form of compulsory labor.

Article 49 of the Criminal Code of the Russian Federation establishes that if a convicted person repeatedly, that is, systematically and maliciously, fails to comply with the requirements of the administration of criminal executive inspections to comply with the order and conditions of serving this type of punishment, then he/she

may be recognized as a malicious violator of the order and conditions of serving compulsory labor and held accountable in the form of replacing compulsory labor with a more stringent penalty, such as forced labor or imprisonment. Law enforcement practice has great difficulties defining the concept of "malicious evasion". For comparison, we note that the most accurate concept of a maliciously evading convict is contained in Article 46 of the Penal Code of the Russian Federation. In accordance with Part 3 of this article, a convicted person is considered to be maliciously evading correctional labor: a) if he/she has repeatedly violated the order and conditions of serving the sentence after being warned in writing for his/her failure to appear at the criminal executive inspection or at work, or b) if he/she has fled his/her place of residence in an unknown direction. The list of violations committed by convicts serving compulsory labor is regulated by a regulatory legal act of the Supreme Court of the Russian Federation, while types of offenses committed by convicts serving correctional labor and forced labor are regulated by penal legislation. So, we can talk about a legal conflict – disagreement and contradiction between regulatory legal acts of the Supreme Court of the Russian Federation and norms of penal legislation governing the same or related legal relations. The category of "malicious" violation of the order and conditions of serving a sentence in the form of correctional labor in accordance with penal legislation is characterized by two signs: repetition (two or more times) and actual evasion from punishment (the convicted person fled his/her place of residence, his/her whereabouts are unknown to law enforcement agencies).

Malice is indicated somewhat differently in the execution of punishment in the form of forced labor.

First, in Article 60.15 of the Penal Code of the Russian Federation, the concept of "malice" is used in two cases, that is, when determining a malicious violator of the order and conditions of serving a sentence and malicious violations of the order and conditions of serving forced labor.

Second, a convicted person is recognized as a malicious violator of the order and conditions of serving forced labor when committing (once) the following serious violation: a) the use

of alcoholic beverages, narcotic drugs or psychotropic substances; b) minor hooliganism; c) disobeying representatives of the correctional center administration or insulting them in the absence of crime elements; d) making, possession or transfer of prohibited items and substances; e) organization of strikes or other group disobedience, as well as participation in them; f) refusal to work; g) unauthorized abandonment of the territory of the correctional center without valid reasons; h) untimely (over 24 hours) return to the place of serving the sentence. It should be noted that there is such a type of malicious violation as refusal to work. Work evasion from compulsory labor serving has a fairly broad interpretation. Therefore, the term “refusal to work” will be more understandable and widespread in the penal system and legislation, which means that will allow law enforcement officers to execute this type of punishment more effectively.

Third, a convicted person may be recognized as a malicious violator of the order and conditions of serving the sentence if he/she has committed at least three non-malicious violations during the year (the latter are prescribed in Part 1 of Article 60.15 of the Penal Code of the Russian Federation): a) violation of public order, for which the convicted person has been brought to administrative liability; b) violation of labor discipline; c) violation of the rules of residence established for the convicted person in the correctional center; d) convict's failure to appear for registration at the correctional center without valid reasons in case he/she is allowed to live outside it.

From the above list of violations of the order and conditions of serving a sentence in the form of forced labor, some definitions of violations regarding punishment in the form of compulsory labor can be borrowed, for example, violations of labor discipline, public order, failure to appear without a valid reason for registration with criminal executive inspections.

Thus, in the sphere of legal regulation of the responsibility of convicts for malicious violation of the order and conditions of serving sentences, there are controversial issues of defining the key concept of “malicious”. There has been a broad discussion about this concept both in criminal and penal legislation during various periods of its functioning, as well as in the le-

gal literature. For example, “convicts who maliciously violate regime requirements” (Article 53 of the Correctional Labor Code of the RSFSR), “malicious disobedience to requirements of the administration of a correctional labor institution” (Article 188.3 of the Criminal Code of the RSFSR), “in case of malicious evasion of a convicted person from serving compulsory labor” (Article 49 of the Criminal Code of the Russian Federation), “convicts who maliciously evade serving compulsory labor” (Article 29 of the Criminal Code of the Russian Federation [6]. From the above example, it can be seen that a malicious violation of the order and conditions of serving a sentence has always been the basis for bringing convicts to disciplinary or criminal responsibility in the form of commutation of the penalty with a more severe type of punishment (compulsory labor is replaced by imprisonment or forced labor) or transferring a convicted person from a correctional institution with a lighter regime of serving a sentence to an institution with a stricter regime (from a penal settlement to a maximum-security correctional facility, from a correctional facility to a prison), with the resulting legal consequences for the convicted person, expressed in certain restrictions, prohibitions and imposition of additional duties [7].

Speaking about judicial activity, it should be noted that the Plenum of the Supreme Court has repeatedly addressed this problem, since there are difficulties in law enforcement practice to resolve the issues of applying these norms to convicts who maliciously violate the order and conditions of serving their sentences in the form of compulsory labor. Thus, in accordance with the resolution No. 59 of the Plenum of the Supreme Court of the Russian Federation of December 22, 2015 “On amendments to certain resolutions of the Plenum of the Supreme Court of the Russian Federation on criminal matters” and Paragraph 5 of the resolution of the Plenum of the Supreme Court of the Russian Federation of December 20, 2011 No. 21 (as amended June 25, 2024) “On the practice of applying legislation on the execution of sentences by courts”, courts, when deciding whether to replace compulsory labor with a more severe punishment, in case of malicious evasion from serving a sentence, must require documents from criminal executive inspections

confirming his/her identity, the nature and degree of public danger of the crime committed, especially documents reflecting the reasons and conditions, according to which the convicted person evaded serving the sentence in the form of compulsory labor. For example, an employee of the institution is required to investigate the reasons for the convicted person's absenteeism, drunkenness, work evasion, etc. when preparing a submission to the court to replace compulsory labor with a more severe punishment. At the same time, 80% of the experts note that employees of criminal executive inspections experience difficulties in preparing high-quality materials for the court. These circumstances require them to have certain knowledge and skills that they can acquire as part of advanced training or professional retraining provided by educational organizations of the Federal Penitentiary Service of Russia.

Conclusion

The study shows that the main types of violations of the order and conditions of serving a sentence in the form of compulsory labor are the following: appearance at work in a drunken state; absenteeism; dismissal from work in order to avoid serving a sentence; evading the obligation to report a change of the place of work or the place of residence within 10 days; failure to appear at work more than twice a month without valid reasons, etc. In this list of violations, the definition of "dismissal from work in order to avoid serving a sentence" is a controversial issue, which requires additional normative interpretation, since the very fact of absence from compulsory work without a valid reason is a refusal to work. For committed offenses, those sentenced to compulsory labor may be subjected to legal measures of influence: replacement of compulsory labor with a more severe type of punishment (Paragraph 5.8 of the resolution of the Plenum of the Supreme Court of the Russian Federation No. 59 of December 22, 2015). In fact, the court imposes a new type of punishment for violations for which responsibility arises, including replacement of compulsory labor with imprisonment. If the convicted person has been warned about the inadmissibility of such behavior, if he/she has not drawn conclusions after a written warning from the administration of the institution, then he/she is recognized as a malicious

violator of the order and conditions of serving this type of punishment and imposed a stricter measure of influence. Replacement of compulsory labor with imprisonment or forced labor resembles a delay in the execution of punishment or probation. Therefore, the proposed measures to improve legal regulation of the execution of punishment in the form of compulsory labor actualize the conclusions of some experts that no matter how perfect the criminal proceedings and criminal law norms are, the real results of the impact on the offender can be assessed only after his/her conviction and during the execution of criminal punishment. It is the order and conditions of serving a criminal sentence that mainly determine success of previous stages regulated by criminal and criminal procedure legislation, which in turn depends on the level of improvement of basic legislation, the effectiveness of which is closely related to law enforcement activities in the field of the execution of any punishment, including in the form of mandatory work [8].

Based on results of the study, we propose to make appropriate amendments to legislation that will contribute to improving effectiveness of the activities of penal enforcement inspections in the field of execution of compulsory labor. The analysis of judicial practice shows that judges decide to recognize a convicted person as maliciously evading compulsory labor if there are the following grounds: a) he/she has not performed compulsory labor more than twice during the month without valid reasons; b) he/she has violated labor discipline more than twice during the month; c) he/she has concealed it in order to avoid serving the sentence. Due to gaps in the regulatory framework, judges sometimes independently develop methodological recommendations and are guided by them when recognizing a person sentenced to compulsory labor as maliciously evading punishment, which sometimes does not correspond to the normative interpretation presented in the resolution of the Plenum of the Supreme Court of the Russian Federation No. 21 of December 20, 2011 (as amended on June 25, 2024) and penal legislation.

Thus, judicial activity in the field of execution of a sentence of compulsory labor is regulated by norms of not only penal, but also criminal procedure legislation, is multidimensional in

nature due to the need for courts to interact with public authorities, law enforcement agencies (prosecutor's office, criminal executive inspections, internal affairs agencies, etc.) and protect convicts, and provides social and legal protection of the rights and legitimate interests of those sentenced to compulsory labor. Per-

forming functions of judicial control (articles 397, 398 of the Criminal Procedure Code of the Russian Federation, Article 20 of the Penal Code of the Russian Federation), the court controls execution of punishment in the form of compulsory labor and resolves issues of its competence.

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