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THE LEGAL NATURE OF CONVICTED PERSONS' LABOR, ITS GOALS, TASKS AND REGULATION FEATURES

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This article will examine the legal nature and highlight the problematic issues of involving convicts serving a term of imprisonment in socially useful work. The goals and tasks of socially useful work as a means of correction and resocialization of such convicts are disclosed. The article formulates proposals for improving the current criminal law enforcement in terms of legal regulation of the application of community service to convicts serving prison terms.

In the work, the author drew attention to the fact that one of the important components of the normal functioning of any society.

Work is the primary basis and necessary condition for the life of people and societies. Work primarily shapes a person, educates his will and character traits. It should be noted that work is not only a means of biological development of a person, but also a tool for continuous development, formation of personal needs, contributes to the growth of his abilities, skills and the ability to use them.

The author believes that it is necessary for the state to provide adequate material and financial support for penal institutions, to provide convicts with the opportunity to choose the desired field of activity, in accordance with their specialty and wishes, to ensure the appropriate level of remuneration and to create the necessary conditions for it.

All this will contribute to the convict's positive attitude towards work, his own desire to engage in it in order to return to society as a full-fledged member of it.

Taking into account the main provisions about the role of work in the development of society and the formation of human consciousness, it is one of the main means of correction and resocialization of convicts.

Key words: socially useful work; convicted person; imprisonment; correction and resocialization.

Formulation of the problem. Community service as a way of influencing those sentenced to imprisonment, according to Art. 6 of the Criminal Executive Code of Ukraine is one of the main instruments of correction and resocialization of convicts and a criterion that is considered when applying to a convicted person parole from serving a sentence. However, the modern paradigm of the formation and development of democratic states should not be based on punitive aspects, but on the resocialization of prisoners through adaptation to normal social life, in which they can realize themselves, without committing further criminal offenses. Therefore, the correction of convicts to deprivation of liberty cannot be carried out through forced labour, as was the case until recently, namely, until April 8, 2014, convict labour was mandatory. However, the harmonization of national legislation with the legislation of the European community and humanization in the field of execution of punishments became the reasons for the adoption by the Verkhovna Rada of Ukraine of the Law of Ukraine No. 1186-VII of April 8, 2014 "On Amendments to the Criminal Code of Ukraine on Adaptation of the Legal Status of Convicts to European Standards" [1], according to which the compulsory labour of those sentenced to imprisonment was abolished.

The purpose of the study. The purpose of the article is to carry out a theoretical analysis of the legal nature of the involvement of convicts who are serving a sentence of imprisonment for a certain period in socially useful work in view of its important importance in the process of correction and resocialization of convicts.

The state of the study. The issue of the work of those sentenced to imprisonment was studied in the works of such outstanding scientists as L. V. Bagrii-Shakhmatova, V. V. Golyna, I. M. Danshina, O. M. Juzhi, V. M. Dryomina, A. F. Zelinsky, M. P. Melentieva, A. S. Mikhlin, A. H. Stepaniuk, Yu. M. Tkachevsky, V. M. Trubnikov, etc. However, the problem of determining the legal nature of the work of those sentenced to imprisonment remains unsolved, and therefore requires further research.

Outline of the main provisions. The work of those sentenced to imprisonment is regulated by the current legislation, in particular the Criminal Executive Code of Ukraine (Articles 118–122) and the Labor Code of Ukraine and occupies one of the leading places in the correction and resocialization of these persons, their compliance with the requirements of laws and other generally accepted rules of behaviour in society. The employment of these persons has its own characteristics, which are determined by the special legal position of the convicts and the tasks set before the institutions of execution of punishments [2, p. 124].

Art. 43 of the Constitution of Ukraine guarantees: "Everyone has the right to work, which includes the opportunity to earn a living by work that he freely chooses or freely agrees to." Art. 63 of the Basic Law declares that "a convicted person has all the rights of a person and a citizen, with the exception of the restrictions defined by law and established by a court verdict" [3].

Unlike those sentenced to deprivation of liberty, for whom the obligation to work is established in the very definition of the content of the punishment in the article of the Criminal Code, those sentenced to deprivation of liberty do not have such an obligation. In Art. 118 of the Criminal Code of Ukraine establishes that those sentenced to imprisonment have the right to work in places and jobs determined by the administration of the colony [4].

The realization of the right to work, the meaning of which is the possibility to freely dispose of one's ability to work by convicts who are serving a sentence in the form of deprivation of liberty, has its own characteristics and limitations.

As noted in the literature, such restrictions have a punitive and educational nature and stem from the punishment itself. These restrictions include: the impossibility of voluntarily entering employment relationships, changing their nature or voluntarily terminating them, free use of funds, etc. [5, p. 200].

In the literature, there is an opinion that establishing the obligation of persons deprived of liberty to work in accordance with the rules of the Criminal Executive Code of Ukraine gives the forced nature of the work of convicts, which contradicts the Constitution of Ukraine. And therefore, the work made mandatory by the Criminal Executive Code of Ukraine acquires the characteristics of coercion, since it does not follow from the court decision that the convicted person is obliged to work while serving the sentence [6, p. 123]. Indeed, as V. Zhernakov points out, the duty of a person sentenced to imprisonment to work while serving his sentence is not directly established in the court verdict. The essence of this punishment is the restriction of the ability to use time at one's discretion during a certain period established by the court based on legislation, which is a component of a person's life. However, deprivation of liberty cannot occur as an abstraction, for this there is a certain form – places of deprivation of liberty (with their own regime). A person, getting to such places, must obey the regime [7, p. 38–39]. And the right, which becomes at the same time the duty of those sentenced to imprisonment, to work, is provided by the criminal law.

In paragraph 3, part 1 of Art. 107 of the Criminal Executive Code of Ukraine, among the rights of convicts serving a prison sentence, the right to participate in work is provided in accordance with the procedure established by the Criminal Executive Code of Ukraine and regulatory legal acts of the Ministry of Justice of Ukraine.

Involvement of convicts in labour does not contradict international norms. In p. 2 Art. 71 of the Standard Minimum Rules for the Treatment of Prisoners stipulates that all sentenced prisoners must work in accordance with their physical and mental capabilities as certified by a doctor [8].

At the same time, it should be noted that there are currently many legal rules that regulate and guarantee the right of convicts to work but are still not properly coordinated among themselves and that contradict the provisions of the Basic Law and international standards for observing human rights.

The minimum standards for the treatment of prisoners provide that this category of persons should have the possibility of employment of their own choice, if it is compatible with their profession, physical and mental abilities, and the requirements of the management of correctional institutions [8]. In this sense, the restrictions mainly relate to the free choice of the type of activity by the convicts, which is provided for by the Basic Law of Ukraine and modern international standards [3]. Article 5-1 of the Labor Code guarantees free choice of activity to all working citizens permanently residing in Ukraine [9]. However, Article 118 of the Criminal Executive Code of Ukraine has the opposite legal norm, according to which convicts must be involved in socially useful work where the administration of the institution in which the convict is serving his sentence will be determined [4].

According to the Instruction on working conditions and wages of convicts, such citizens can participate in paid work, in particular, in labor adaptation centers, auxiliary farms, workshops, at enterprises in penitentiary institutions, in auxiliary service work of such institutions, etc. [10].

The paid work of the convict while serving the sentence is included in his total work experience. The accounting of hours worked by convicts is entrusted to the administration and is carried out according to the results of the year. If the convict systematically avoids work, the corresponding period is excluded from the term of his work experience by the decision of the administration of the penitentiary institution.

According to Chapter XVII of the Rules of Internal Procedure of Penitentiary Institutions, convicts have the right to work. Their work is carried out on a voluntary basis in accordance with the procedure provided for in Art. 118 of the Criminal Executive Code of Ukraine [11].

Part 1 of Art. 118 of the Criminal Executive Code of Ukraine on the procedure and conditions for the involvement of convicts in work provides that this category of persons is involved in socially useful work in accordance with their age, gender, ability to work, specialty and state of health and in accordance with the production facilities available in the penitentiary [4].

The legal nature of convicted persons' labor, its goals, tasks and regulation features

In our opinion, the work of convicts should be a duty. After all, a person who committed a crime, caused harm to society, lives while serving a sentence at the expense of taxpayers. The work of convicts does not contradict the Basic Law, which prohibits the use of forced labour. According to Part 3 of Article 43 of the Constitution of Ukraine, the work of convicts does not fall under the definition of forced labour [3].

According to the Law dated 08.04.2014 No. 1186-VII "On Amendments to the Criminal and Executive Code of Ukraine on the Adaptation of the Legal Status of Convicts to European Standards", the obligation to work for convicts became their right – convicts have the right to choose: to work or not, serving a sentence.

Given this legislative norm, it becomes quite clear that the constitutional right to work for convicted persons who are deprived of their liberty turns into an obligation, albeit a paid one.

When considering the role of community service for convicts serving a sentence, it should be remembered that it is not only a way of biological development of a person, but also contributes to the growth of the needs of the individual, his abilities, skills, and the ability to use them.

A.H. Stepaniuk notes that "recruitment to work is primarily aimed at encouraging convicts to treat work as a positive and necessary component of their lives, including further life on the loose. The European Prison Rules impose the same requirements on the work of prisoners. It is necessary that, after being released from the institution of execution of punishments, a person should have certain skills and abilities that will enable her to find a legal means of livelihood and help her to painlessly enter life in freedom." [12, p. 222].

Community service is a powerful factor that affects the formation of the convict's personality, in particular, work contributes to psycho-emotional relief to a certain extent and distracts from obsessive thoughts, besides, time passes faster. A conscientious attitude to work provides an opportunity to earn parole or receive other benefits provided by law, acquire useful skills, etc. At the same time, this means of influence has features that are determined by the legal status of convicts, the need to involve them in paid work and the institutions' performance of tasks set by the state.

Conclusions: Summarizing the above, we consider it possible to draw the following conclusions. Work for convicts is one of the most important means of influencing them. The work of convicts has certain legal restrictions introduced by the state and takes into account the necessary educational influence on convicts from the administration of correctional institutions. At the same time, the right to work remains a constitutional right of the convict himself. In general, a reasonable amount of punishment has a positive corrective effect on the majority of those sentenced to imprisonment.

Legislators, scientists, and practitioners conducted a legal analysis of the importance of community service for the re-education of those sentenced to imprisonment. They concluded that the work of convicts is one of the means and stimulating factors for their correction and return to a normal way of life. For persons sentenced to prison terms, work is both a right and an obligation at the same time.

Thus, in our opinion, if you deprive a person of the right to choose and forcibly impose socially useful work, it becomes unclear: the convict works because he has no alternative, or because he realized the need for work for the purpose of his own social development, acquiring useful professional skills, the desire to be fulfilled, which steadily leads to obedient behaviour. Labour can have resocialization or correctional potential only if it is voluntary, if on the contrary, then it performs the role of a punitive tool, without causing the convicted person to treat her with respect.

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ПРАВОВА ПРИРОДА ПРАЦІ ЗАСУДЖЕНИХ, ЇЇ ЦІЛІ, ЗАВДАННЯ ТА ОСОБЛИВОСТІ РЕГУЛЮВАННЯ

У цій статті досліджено правову природу і висвітлено проблемні питання залучення засуджених, які відбувають покарання у вигляді позбавлення волі на певний строк, до суспільно корисної праці. Розкрито цілі і завдання суспільно корисної праці як засобу виправлення і ресоціалізації таких засуджених. Сформульовано пропозиції щодо вдосконалення чинного кримінально-

виконавчого законодавства в частині правового регулювання застосування суспільно корисної праці до засуджених, які відбувають покарання у виді позбавлення волі.

У роботі автор звернув увагу на те, що одним із вагомих складників нормального функціонування будь-якого суспільства була й залишається праця, без якої неможливе виробництво матеріальних і культурних благ. Праця – це першооснова й необхідна умова життя людей і суспільств. Праця насамперед формує людину, виховує її волю та риси характеру. Потрібно зазначити, що праця є не лише засобом біологічного розвитку людини, але й інструментом для постійного розвитку, формування потреб особистості, сприяє зростанню її здібностей, навичок та умінь їх використання.

Автор вважає за потрібне, щоб держава надала належне матеріальне та фінансове забезпечення установ виконання покарань, забезпечила засудженим можливість вибору бажаної сфери діяльності, відповідно до їхньої спеціальності й побажань, забезпечила належний рівень оплати праці та створення потрібних для неї умов. Усе це сприятиме позитивному ставленню засудженого до праці, власному бажанню працювати, щоб повернутись у суспільство повноцінним її членом.

Зважаючи на основні положення про роль праці в розвитку суспільства й формуванні людської свідомості, вона є одним із основних засобів виправлення та ресоціалізації засуджених.

Ключові слова: суспільно корисна праця; засуджений; позбавлення волі; виправлення і ресоціалізація.