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Shamshilova E. A.**Шамшилова Е. А.****REGULATION AND ORGANIZATION OF CONVICTS' WORK
IN PLACES OF DEPRIVATION OF LIBERTY:
SOME CHALLENGES****РЕГЛАМЕНТАЦИЯ И ОРГАНИЗАЦИЯ ТРУДА ОСУЖДЕННЫХ
В МЕСТАХ ЛИШЕНИЯ СВОБОДЫ:
НЕКОТОРЫЕ ПРОБЛЕМЫ**

Abstract. The article is devoted to the process of convicts attracting to work as a means of their correction. The main goals of convicts' employment are outlined, as well as the problems of regulatory control of this process. The data of the Prosecutor's office on compliance with the law in correctional institutions in the sphere of attracting convicts to work are analyzed. The study of legislation in the field of convicts' employment revealed fragmentary regulation of this process, which is explained by the consolidation of norms on attracting this category of persons to work in both the Penal and Labor Codes of the Russian Federation. Taking into account the fact that the basis for regulating issues in the sphere of execution of punishments is the Penal Code of the Russian Federation. The author concludes that it is necessary to make changes to the Penal legislation of Russia in the part concerning the organization of convicts attracting to work, as well as by adding rules on their dismissal. In addition, such problems in the sphere of employment of convicts as the lack of jobs, which entails a high level of non-working convicts, and the organization of remuneration that does not correspond to the stated in the labor legislation, were considered. Possible ways to solve these problems are suggested.

Keywords: convicts, labor of convicts, deprivation of liberty, means of correction, the Penal Code of the Russian Federation, the Labor code of the Russian Federation.

Аннотация. В статье рассматривается процесс привлечения осужденных к труду как средство их исправления. Обозначены основные цели трудоустройства осужденных, а также определены проблемы нормативного регулирования данного процесса. Проанализированы данные прокуратуры за соблюдением законов в исправительных учреждениях в сфере привлечения осужденных к труду. Проведенное исследование законодательства в сфере трудоустройства осужденных выявило фрагментарную регламентацию данного процесса, что объясняется за-

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креплением норм о привлечении указанной категории лиц к труду и в Уголовно-исполнительном, и в Трудовом кодексах Российской Федерации. Учитывая тот факт, что основой регулирования вопросов в сфере исполнения наказаний является Уголовно-исполнительный кодекс Российской Федерации, автором сделан вывод о необходимости внесения изменений в уголовно-исполнительное законодательство России в части, касающейся организации привлечения осужденных к труду, а также путем добавления норм об их увольнении. Кроме того, рассмотрены такие проблемы в сфере трудоустройства осужденных, как нехватка рабочих мест, которая влечет за собой высокий уровень неработающих осужденных, и организация оплаты труда, не соответствующая заявленной в трудовом законодательстве. Предложены возможные пути решения данных проблем.

Ключевые слова: осужденные, труд осужденных, лишение свободы, средства исправления, Уголовно-исполнительный кодекс Российской Федерации, Трудовой кодекс Российской Федерации.

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The most important place among the means of convicts' correction – one of the goals of the Penal legislation in Russia – is socially useful work. The most important place among the means of correction of convicts – one of the goals of the penal legislation in Russia – is socially useful work. Traditionally, it is considered as one of the main means for achieving this goal, indicated in Part 1 of Article 1 of the Penal Code of the Russian Federation (hereinafter – the PC of the Russian Federation). In other words, criminal punishment involves the rehabilitation of offenders by bringing them to work. However, the question of the purpose of attracting convicts to work was a subject of controversy in the legal literature.

Thus, the work of convicts pursues, from the point of view of L. G. Krakhmal'nik, economic, educational and health-improving goals (1963, pp. 12, 16). We consider it possible to agree with the opinion of this author precisely in terms of achieving economic and educational goals. In our opinion, health-improving goals can be achieved to a greater extent by physical education of convicts during sport events. At the same time, there is a healthy need for people to work to maintain normal life activity. Work, while preventing the harmful effects of idleness, compensates to some extent for the hardships of isolation, thereby preserving mental and physical health of prisoners (Shamsunov, S. Kh. 2003, p. 11).

Some authors believe that educational work, general education and vocational training with convicts in institutions that execute sentences, significantly weaken (Dubrovitskiy, L. P. 1997, p. 27–28). In this regard, we can talk about strengthening the role of convicts' labor to achieve the goal of their correction. The legislator stressed that the productive activities of convicted persons must not interfere with the main task of correctional institutions to change (correct) convicts (Part 5, Article 103 of the PC). However, it is also necessary to conduct moral and psychological work together with the involvement in labor, since the fact of acquiring labor skills does not form positive

moral attitudes of the individual and does not guarantee further law-abiding behavior of the convicted person. When referring to education by work, we mainly refer to the specifics of communication between the convict in the process of properly organized work with other convicts, which should have an impact on the formation of positive personality qualities (discipline, responsibility, self-control, etc.).

The main normative legal act regulating labor relations of convicts is the PC of the Russian Federation. However, at present, it can be said that the regulation of convicts' work is fragmentary. Thus, the procedure for employment of persons sentenced to imprisonment, conditions and remuneration of labor, its organizational and legal forms are set in Chapter 14 of the PC of the Russian Federation. This Chapter regulates issues related to convicts' employment, especially in comparison with employment of ordinary citizens, although some articles of this Chapter of the PC indicate direct references to other legal acts. For example, Part 2 of Article 103 of the PC of the Russian Federation states that convicted men over 60 years old and convicted women over 55 years old, as well as convicts who are disabled of the first or second group, are attracted to work at their request in accordance with the legislation of the Russian Federation on labor. Part 4 of the same article says that the list of jobs where the use of convicts' labor is prohibited is established by the internal regulations of correctional institutions approved by the Order of the Ministry of Justice of the Russian Federation No. 295 (adopted on 16.12.2016).

The main legal forms of organization of convicts' labor are indicated in Part 1 of Article 103 of the PC of the Russian Federation. These include centers for labor adaptation of convicts and production (labor) workshops of correctional institutions. Federal state unitary enterprises of the Penal system and organizations of other organizational and legal forms located on the territories of correctional institutions and (or) outside of them, provided

that the convicts are properly protected and isolated. In addition to these, Article 17 of the Law of the Russian Federation “on institutions and bodies that execute penalties in the form of deprivation of liberty” adopted on 21.07.1993, No. 5473-I this form of organization of convicts work is defined as economic maintenance of institutions that execute punishments and pre-trial detention centers, while the procedure for leaving convicts to prison to perform this type of work is stipulated in article 77 of the PC of the Russian Federation.

Questions of financial responsibility of convicts, working hours, rules of labor protection, safety, industrial sanitation, remuneration are assigned to the jurisdiction of the Labor Code of the Russian Federation (hereinafter – the LC of the Russian Federation). At the same time, the basis for regulating convicts' employment remains the Penal legislation, and the provisions of the LC of the Russian Federation are “auxiliary” in nature.

It should be noted that the issues of convicts' dismissal, who perform paid work, as well as the grounds for exemption from them, are absent both in the penal and labor legislation. This inevitably entails a certain number of violations, in particular, violation of the principle of convicts' mandatory labor, stipulated in Part 1 of Article 103 of the PC of the Russian Federation. From the analysis of the reports of the Prosecutor's office staff, it follows that in 79 subjects of the Russian Federation, the requirement of convicts' mandatory involvement in labor is not fully met (Archive of the Ryazan Prosecutor's office for compliance with laws in correctional institutions for 2015 – 1 quarter of 2017). This may indicate some miscalculations in the activities of correctional officials due to insufficient legal regulation of this issue. In scientific publications of contemporary authors, the problem of prisoners release from paid work is one of the most debatable (Levitskaya, A. G. 2008, pp. 51–58) and, in our opinion, require correction of law by adding rules relating to the dismissal of convicts and release them from paid work, in Chapter 14 of the PC.

Meanwhile, according to Professor V. A. Utkin, the real acuteness of the problems of attracting convicts to work at present lies not in the mandatory or voluntary nature of convicts' work. The vast majority of convicts want to engage in paid productive work (Utkin, V. A. 2015, pp. 81–88).

And this is where the problem of lack of jobs in correctional institutions manifests itself. According to the General Prosecutor's office of the Russian Federation, the average number of convicts in penal institutions in 2018, subjected to mandatory employment, was 458,876 people. At the same time, there were only 194,653 jobs available, and 170,257 people were employed, or 37.1% (Archive of the Ryazan Prosecutor's office for compliance with laws in correctional institutions for 2015 – 1 quarter of 2017) of the total number of able-bodied convicts. The mass lack of convicts' involvement to work while serving their sentences, mainly in correctional institutions where convicts are together, inevitably leads to a deterioration of law and order in these institutions and is a destabilizing factor (Shamsunov, S. Kh. 2003).

It is impossible not to touch upon the issues of remuneration for convicts, which are regulated by Article 105 of the PC of the Russian Federation. In accordance with this article, persons sentenced to deprivation of liberty have the right to be paid for work in accordance with the labor legislation of the Russian Federation. The amount of wage for convicts, who completed a fully defined monthly working time limit and fulfilled the established norm for them, may not be lower than the established minimum wage. However, contrary to this provision, including Part 3 of Article 133 of the LC of the Russian Federation on the establishment of the minimum wage, the average salary of convicts in the first quarter of 2017 was 4519.1 rubles (Archive of the Ryazan Prosecutor's office for compliance with laws in correctional institutions for 2015 – 1 quarter of 2017), while from 01.07.2016, in accordance with Federal law No. 164

adopted on 02.06.2016 “on amending article 1 of the Federal law “on the minimum wage”, the minimum wage was 7500 rubles per month. It is also worth noting that the convict’s accrued wages differs from the amount of cash credited to his personal account, because of work deductions for compensation costs in accordance with Part 4 of Article 99 of the PC of the Russian Federation and the payment of sums to claimants in the Order established by the Federal law adopted on 02.10.2007 No. 229 “On enforcement proceedings”. However, regardless of all deductions, at least 25% of the total accrued wage must be credited to the convict’s personal account (Article 107 of the PC of the Russian Federation).

Given the existing organizational and legal problems in the field of employment in places of deprivation of liberty and the high level of non-working convicts, it can be concluded that the correction of convicts does not sufficiently depend on their involvement in work. In this regard, we agree with A. I. Zubkov’s position that it is necessary to more actively influence changes in the legislative framework and create a well-thought-out and progressive program of legislative initiatives for the future: radically revise the articles of the PC of the Russian Federation regulating the procedure for attracting convicts to work (*Penal System of Russia: development strategy: materials of the scientific and practical conference (May 26–27, 2005)* 2005, p. 8). This requires further adjustment of the penal legislation.

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