

УДК 347.2

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## SOCIAL AND LEGAL PROBLEMS OF FORCED LABOR IN THE REPUBLIC OF KAZAKHSTAN

*Мақалада, әрбір мемлекеттің жаһандық мәселесі ретінде, «мәжбүрлі еңбек» түсінігінің әлеуметтік-құқықтық аспектілерін ашатын және оны ұлттық заңнамаға еңгізілуінің өзекті мәселелері қарастырылады.*

*Құқықтық мемлекеттегі мәжбүрлі еңбек – тиімді құқық қолдану тәжірибесін, жұмыспен қамтылу мен жұмыссыздықтың саласындағы профилактикалық іс шаралар, мәжбүрлі еңбектің құрбаны ретінде тұрғындардың әлеуметтік осал категориясын қорғауды байланыстыратын, түп тамырымен жою үшін кешенді тәсілі қажет, адам мен азаматтың қызметінің жол берілмеуге тиіс нысаны.*

*Авторлармен еңбек құқығының негізгі қағидалары ретінде еңбек бостандығы мен мәжбүрлі еңбекке тыйым қағидаларының мазмұнына көзқарастары талданған.*

***Түйін сөздер:** еңбек шарты, жұмыскер, жұмыс беруші, еңбек қатынастары, мәжбүрлі еңбек, өзін өзі қорғау, ынталандыру.*

*В статье рассматриваются актуальные вопросы, раскрывающие социально - правовые аспекты понятия «принудительный труд» как глобальной проблемы каждого государства и его имплементации в национальное законодательство.*

*В правовом государстве принудительный труд - это недопустимая форма деятельности человека и гражданина, для искоренения которого необходим комплексный подход, сочетающий эффективную правоприменительную практику, профилактические мероприятия в области занятости и безработицы, защиту социально- уязвимых категорий населения как жертв принудительного труда.*

*Авторами анализируются подходы к содержанию принципа свободы труда и запрета принудительного труда как основных принципов трудового права.*

***Ключевые слова:** трудовой договор, работник, работодатель, трудовые отношения, принудительный труд, самозащита, мотивация.*

*The article deals with current issues that reveal the socio-legal aspects of the concept of "forced labor" as a global problem of each state and its implementation in national legislation.*

*In a state governed by the rule of law, forced labor is an unacceptable form of human and civil activity that requires a comprehensive approach that combines effective law enforcement practice, preventive measures in the field of employment and unemployment, and protection of socially vulnerable categories of the population as victims of forced labor.*

*The authors analyze approaches to the content of the principle of freedom of labor and the prohibition of forced labor as the main principles of labor law.*

***Keywords:** labor contract, employee, employer, labor relations, forced labor, self-defense, motivation.*

The relevance of the research. According to research by the non-profit organization Walk Free, 40 million people were in slavery in 2018. This phenomenon is most common in countries such as the DPRK, Eritrea, Burundi, CAR, Afghanistan, Mauritania, South Sudan, Pakistan, Cambodia and Iran. The Republic of Kazakhstan ranks 83rd in this rating, ahead of the Russian Federation and Central Asian countries. Today, 75,000 Kazakhstanians are in slavery [1]. Moreover, most often, human labor is exploited in

such areas as agriculture and industry, construction, and various services [2].

Convention of the International Labor Organization (hereinafter - ILO) No. 29 "On forced or compulsory labor" (hereinafter - the Convention), under forced or compulsory labor means "any work or service required from a person under the threat of any punishment, for which that person has not voluntarily offered his services" (article 2) [3].

The following types of work are not included

in the content of forced or compulsory labor:

- a) compulsory military service;
- b) the ordinary civil duties of citizens of a fully self-governing country;
- c) works performed under a court order;
- d) works performed under extraordinary circumstances, i.e. in cases of war or disaster or threat of disaster;
- e) small-scale community-based work [3].

Thus, the ILO points to two important features of forced labor. Firstly, the work is carried out under the threat of punishment, which can manifest itself in various forms of physical, mental or sexual violence. Secondly, the employee does not voluntarily agree to perform the work, due to the deceived or intimidated state.

According to paragraph 1 of article 24 of the Constitution of the Republic of Kazakhstan, "everyone has the right to freedom of labor, free choice of labor activity and profession. Forced labor is permitted only under a court order or under a state of emergency or martial law." [4]

Article 5 of the Labor Code of the Republic of Kazakhstan regulates that everyone has the right to freely choose work or freely agree to work without any discrimination or coercion, the right to dispose of their abilities to work, to choose a profession and labor activity. Article 7 of the Labor Code of the Republic of Kazakhstan prohibits forced labor, establishing that it is allowed due to a court sentence that has entered into legal force, provided that the work is carried out under the supervision and control of state authorities and that the person performing it will not be assigned or transferred to physical and (or) legal entities, as well as in conditions of emergency or martial law [5].

At the same time, the Labor Code of the Republic of Kazakhstan defines forced labor as "any work or service required from any person under the threat of any punishment, for which this person did not voluntarily offer their services" [5].

The idea of prohibiting forced labor is directly related to the principle of the right to freedom of labor. It should be noted that the attitude to freedom of labor has undergone changes due to the socio - economic situation in society. For example, in the 50s the principle of freedom of labor assumed protection from exploitation and unemployment, in the 70s it meant freedom of labor contract, in the 80's free choice of labor activity and occupation [6].

According to the fair conviction of L. Y. Bugrov, "... individuals have the right to choose between employment and non-employment"[7, p.

27]. In other words, a modern person has not only the absolute right to dispose of their abilities to work at his own discretion, but also the right not to conduct any labor activity at all, which is not the basis for bringing him to legal responsibility.

In our opinion, the freedom of work currently implies the ability of an individual to independently choose active or passive employment, choose a place of work and work function, conclude and terminate a labor contract.

The main element in the freedom of work is the individual's motivation. Motivation is a multi-level phenomenon and according to the theory of human needs A. Maslow includes 5 groups. The first group consists of physiological needs, consisting in the need for food, clothing, etc. The second group assumes the need for security and protection from diseases, poverty, natural disasters, etc. The third level refers to the social needs, which is manifested in the establishment of relationships with other people. The fourth is in demand for recognition, fame, prestige, and respect. The last group, the highest, implies the need for development and self-improvement [8].

Thus, motivation covers various stages of human needs, starting from the basic income for his own life support and ending with the desire for self-realization and self-improvement. Without denying the theory of A. Maslow, we will establish that motivation to perform a particular job can be divided into two large groups - material (basic) and moral. If the basis of labor activity is only material motivation, the work can be considered "compelled", which is not identical with the concept of "forced". Often, the employee is driven only by basic goals in choosing a job. Despite the lack of moral satisfaction, he purposefully spends his labor potential in the sphere where it is most possible to provide himself with basic needs. So the element of "voluntariness" in this case takes place, although in such a one-sided manifestation.

In the case of forced labor, it is necessary to establish the complete absence of any of the above forms of motivation. In addition, it is necessary that the lack of motivation is accompanied by expressed disagreement with the performance of work and the presence of coercion to perform them. Only in the presence of all these elements, it is possible to claim about the forced nature of labor.

It should be noted that currently the employer practically does not use physical violence or threats against the employee. Violence as such has undergone a certain transformation, and,

unfortunately, has entered the category of hard-to-prove acts. Often, employees are forced to perform unwanted work or certain work operations under fear of dismissal.

The branch Institute of self-protection of labor rights of employees deserves some attention within the framework of the studied problem. Self-defense, as a special form of protection in labor law, implies passive behavior of the employee associated with refusal to perform work and the employer's requirements. This behavior is caused by reasons that violate the rights, legitimate interests and freedoms of the employee and is expressed in the form of his inaction.

For example, according to subparagraph 19, part 1 of article 22 of the Labor Code of the Republic of Kazakhstan, an employee has the right to refuse to perform work in the event of a situation that threatens his health or life [5].

Article 56 of the Labor Code of the Republic of Kazakhstan provides for the possibility of the employee to terminate the labor contract, in cases of non-compliance by the employer of the labor contract by notifying the employer within seven days. After the expiration of this period, the employee has the right to stop performing work by giving the employer three days' notice. According to article 131 of the Labor Code of the Republic of Kazakhstan, the employer is obliged to pay compensation for loss of work in the amount of the average monthly wage [5].

Self-defense, regulated by the norms of labor

legislation, takes only one form - refusal to perform labor duties. And, accordingly, the pressure on the employee under the conditions under consideration should be assessed as forced labor.

The main socio - economic factors that make it possible to involve people in various forms of forced labor are a sharp decline in the population's income, a low level of education, migration and gender problems, growing poverty [3].

An important role in the prevention and fight against forced labor should be played by law enforcement authorities, labor inspections, trade unions, non-governmental organizations. Close and mutually supportive cooperation of the abovementioned bodies is assumed due to their different capabilities in solving the envisaged tasks that will increase the effectiveness in the fight against forced labor and will not allow forced labor to accept conditions similar to slavery [9].

The problem of forced labor is relevant in every modern state, and its elimination will require comprehensive measures that combine active prevention, law enforcement and protection of victims of such labor. Only if the rule of law, social support for vulnerable segments of the population, and effective employment measures are implemented by the state, a favorable climate for ensuring the principle of freedom of work can be achieved.

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