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THE CONCEPT OF "FORCED LABOR": ANALYSIS OF NATIONAL LEGISLATION AND INTERNATIONAL LEGAL STANDARDS

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ABSTRACT

This article analyzes the norms of international law and national legislation regarding to the legal nature of “forced labor”. The article reveals the features of transformation into national legislation norm of the International Labor Organization on the issue of forced labor.

According to the International Labor Organization (ILO), today about 40 million people in the world suffer from various forms of slavery. People are involved in forced labor through threats, violence, deception and abuse of power [1].

Forced labor, modern forms of slavery, and human trafficking are issues of particular concern and concern to the world community.

The ILO General Conference, which adopted its first document on forced labor in 1930, the 29th Convention on Forced Labor or Forced Labor, called on member states to take the necessary measures to prevent the use of forced labor as soon as possible and to establish criminal liability for such crimes. Nevertheless, almost 90 years have passed and the

Convention has been ratified by almost all member states, but the practice of using forced labor is emerging in new forms and forms.

Naturally, the issues of legal regulation of the prohibition of forced labor are not limited to national legislation. In this regard, the importance and role of international treaties, norms of international custom, decisions of international courts, doctrines, etc., which are sources of international law, are particularly important.

Forced labor must be punished as a crime. Today, this situation is a universal fact. The vast majority of ILO member states have ratified both conventions on forced labor. Generally, national legislation, in particular criminal law and labor law, prohibits forced labor, as well as the practice of slavery and other similar practices, and imposes sanctions on cases of forced labor.

However, in his speech at the 93rd session of the ILO Director-General in 2005 on "The Global Alliance Against Forced Labor", he noted that in almost all countries, the two problems are common. First, with some exceptions, there is no clear definition of the concept of “forced labor,” which in turn complicates the role of law enforcement in identifying and punishing offenders. Second, as a result of the above situation, no matter which state we take, the cases of punishing those who use forced labor are very rare. Thus, such a vicious circle is taking root: the lack of clear legislation, the lack or total lack of resources to prosecute, the underestimation of the problem and the limited advocacy activities, and therefore the desire to adopt strict and clear legislation and so on [2].

So, how can we assess the compliance of our national legislation with international legal standards, the level of implementation of international law in our legal system?

As of September 1, 2019, the Republic of Uzbekistan has ratified 17 ILO conventions, including 8 main conventions, as well as the Convention for the Suppression of Child Labor and Forced Labor. Of these documents, the 29th Convention on Forced or Forced Labor, the 105th Convention on the Abolition of Forced Labor, and the Protocol to the 29th Convention on Forced Labor, ratified by Uzbekistan on 25 June 2019, directly regulate legal relations related to forced labor.

The report of T. Narbaeva, who took part in the 103rd session of the International Labor Conference as the head of the Uzbek delegation, shows how relevant the issue is for Uzbekistan. "Admittedly, ratification

of the conventions does not mean that the problem is solved," he said. Ratification of the Conventions is a 50 percent solution to the problem, and the rest is the implementation of international norms into national legislation, which is the first. Secondly, and most importantly, we need to change the practice of law enforcement and the thinking of the population, especially farmers and employers. ”[3]

An analysis of the norms of national legislation and international legal instruments shows that there are significant differences in the interpretation and application of the concept of "forced labor".

Major international human rights instruments, such as the Universal Declaration of Human Rights, the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights, contain provisions prohibiting coercion. For example, Article 8, paragraph 3, of the International Covenant on Civil and Political Rights states that "No one shall be compelled to work in compulsory or compulsory labor" and that the term "compulsory or compulsory labor" is not used.

However, the above-mentioned international legal documents do not provide a legal definition of the concept of "forced labor". Such a definition was first used in the 1930 Convention on Forced Labor or Forced Labor, adopted by the ILO in 1930 (hereinafter -

Convention No. 29 is based on the definition given in Article 2 and subsequently adopted in other international legal instruments and national legislation. The Uzbek translation of the Convention uses the term "forced or forced labor" [4]. Thus, in accordance with Article 29, paragraph 1, of Convention 29, "for the purposes of this Convention, the term 'forced or compulsory labor' means any work or service that is required under the threat of any punishment from any person who does not voluntarily offer his services". This definition includes two important elements: work or service is performed under the threat of punishment and is done against the person’s will. At this point, it should be noted that punishment is manifested not only in the form of any sanction, but also in the form of deprivation of human rights and privileges.

In addition, threats of punishment can manifest in numerous and varied forms. In particular, physical coercion or restriction of liberty, or even the threat of death to the victim or his or

her relatives, may be the most egregious manifestations of coercion. There are also cases of migrants working illegally in the country being forced to do certain work under the threat of extradition to the competent authorities of the government. Some manifestations of the threat of punishment may also be financial in nature. In particular, non-payment of wages with the threat of dismissal in cases where the employee refuses to work overtime provided for in the employment contract or legislation. In this case, we can also see the second element of the concept of forced labor - the state of voluntary non-provision of their services.

In national legislation, the definition of "forced labor" was first defined in Article 7 of the Labor Code of the Republic of Uzbekistan. According to him, "forced labor, that is, coercion to work by threatening to impose any punishment (including as a means of maintaining labor discipline) is prohibited" [5]. This definition is in part consistent with the definition given in Convention 29. Also, Article 2, the third paragraph of the Law "On Employment" gives the same meaning as the definition of forced labor in the Labor Code, ie "Forced labor, ie coercion to work with the threat of any punishment is prohibited. , except as provided by law "[6].

However, it should be noted that this legislation does not contain an important element of the definition in Convention 29 - the condition that an individual does not voluntarily offer his services. This shortcoming in national legislation can lead to ambiguity and misinterpretation in law enforcement practice, in particular when considering issues of liability established for cases of forced labor.

The definition in the Labor Code prohibits the use of forced labor as a means of maintaining labor discipline, which is a form of threat with punishment. However, Article 1 of the 105th Convention on the Elimination of Forced Labor (hereinafter referred to as the 105th Convention) states that "each member of the International Labor Organization that has ratified this Convention undertakes not to terminate or use any form of forced or compulsory labor. assumes:

a) political influence, or as a means of education or punishment, for the existence or expression of political views or ideological beliefs contrary to the existing political, social or economic system;

b) as a way to mobilize and use labor for economic development needs;

c) as a measure of labor discipline;

d) as a punishment for participation in a strike;

e) as a measure of discrimination on the grounds of race, social, national origin or religion ”[7].

According to the Russian researcher VP Moshnyaga, the Convention is a measure of political repression, education, punishment for political and ideological views, mobilization of labor resources, strengthening labor discipline, punishment for participation in strikes from any form of forced or forced labor. prohibits the use of [8].

It should be noted that the above actions are, first of all, cases applied by the state. This was due to the increase in the mass use of forced labor for ideological, political and other purposes during the Second World War and its aftermath, which created the need for the adoption of Convention 105.

Only one of the forms of forced labor enshrined in the Labor Code, Convention 105, prohibiting coercion as a means of maintaining labor discipline can be explained by the fact that this situation mainly applies to the relationship between the employee and the employer. This is, of course, a relationship governed by labor law.

Article 29, paragraph 2, of Convention 29 also contains cases that are not considered to be “forced or compulsory labor”, the list of which is almost identical to the cases provided for in Article 7, Part 2 of the Labor Code. However, a comparative analysis of these documents has shown that national legislation has significant shortcomings in this regard.

In particular, Article 29, paragraph 2, subparagraph (a) of the Convention establishes the following norm: "Any work or service required by the law on compulsory military service and applied to work of a genuine military nature shall not be considered compulsory labor."

The same norm is stated in Article 7 of the Labor Code: "Work that must be performed under the laws on military or alternative service is not considered forced labor."

In these two cases, the content of the "actual military matters" referred to in Convention 29 is related to national legislation, in particular the Law of the Republic of Uzbekistan "On General Military Obligation and Military Service" of 2002, which regulates the procedure for military service. other legislation does not provide a legal assessment. In view of the fact that the Convention has been ratified by the Republic of Uzbekistan and its

requirements are binding on the subjects of the national legal system, the legislation should define its content and strictly define the list of "real military activities" to be performed under military or alternative service law. will be required. Otherwise, it will be difficult to make a fair legal assessment of the violation of the rights and legitimate interests of citizens serving in the military in the practice of law enforcement.

However, Article 29, paragraph 2, subparagraphs (b) and (e) of Convention No. 29 also contain cases which are not provided for in national law and are not considered to be forced labor:

(B) any work or service which constitutes part of the ordinary civic duties of the citizens of a fully self-governing country;

e) minor community services, ie work performed by members of the team for the direct benefit of the team and therefore considered to be normal civil duties of team members, provided that only members of the team or their direct representatives have the right to consult on the appropriateness of such work. [10].

In these two cases, the main emphasis is on the fact that the performance of work by citizens of the country, which is a civic duty enshrined in law, is not considered forced labor. Clearly, the involvement of citizens in such activities requires strict adherence to the established requirements.

In this regard, given the lack of the concept of "minor community services" in the national legislation, the involvement of citizens in such activities may lead to a violation of their labor rights, the legal assessment of this issue and the procedure for involving citizens in such activities It is necessary to strengthen it by making relevant amendments to the Law "On Employment".

Based on the analysis of national legislation and international legal standards on the legal nature of the concept of "forced labor", we can draw the following conclusions:

First, the definition of “forced labor” was originally given in the 1930 ILO Convention No. 29 on Forced Labor or Forced Labor, which has a much broader meaning. In our national legislation, this concept is enshrined in the Labor Code, and its definition does not provide for an important element - the fact that a person does not voluntarily offer his services. This leads to a one-sided approach in the legal assessment of cases of forced labor in law enforcement practice.

Second, ILO conventions provide a detailed list of forms of

forced labor, while national legislation strengthens the prohibition of only one form - forced labor as a measure of labor discipline.

Third, although the list of jobs and services that are not considered as forced labor is provided for in both international conventions and national legislation, national legislation in most places does not comply with the norms of international treaties ratified by our country.

Fourth, while acknowledging that international legal standards on forced labor have had a significant positive impact on the formation of national legislation, our legislators have not fully assessed the content and essence of international legal norms in the implementation of these standards in national legislation. Legal relations related to the concept of forced labor are limited to the scope of labor law.

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3. In the original English text of the ILO conventions, this concept is adopted in the form of "forced labor" and "compulsory labour".

4. The text of the document is available at http://www.lex.uz/docs/2741079

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