



PROHIBITION OF FORCED LABOR: A COMPARATIVE ANALYSIS OF WORLD CONSTITUTIONS

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Abstract:

The goal of this study is to examine the constitutional prohibitions against forced labor in world countries. Four methods of strengthening the prohibition of forced labor in constitutions are suggested by the author: strict prohibition of all forms of forced labor; forced labor is generally prohibited, but may be permitted as a social obligation in exchange for a certain compensation; forced labor is prohibited, and any violation of this prohibition constitutes a crime; forced labor is prohibited, but it may be used as a punishment for crimes committed.

Keywords: forced labor, constitution, child labor.

INTRODUCTION

Many countries prohibit forced labor by specific constitutional norms or principles. Constitutional rules may provide sufficient protection in countries where they apply directly. Other legal acts may also need to be used to prohibit forced labor in some countries.

THE MAIN PART

Some countries prohibit forced labor without any additional conditions in their constitutions.

In particular, according to Article 20 of the Constitution of Sudan, "Every human being shall have the right to life, freedom, safety of person and dignity of honour save by right in accordance with the law; and he is free of subjection to slavery, forced labor, humiliation or torture"[1]. In accordance with the second part of Article 37 of the Constitution of the Russian Federation, "forced labor is prohibited"[2].

Article 12 of the Constitution of the Arab Republic of Egypt determines the following norm: "No citizen may be forced to work except as required by Law and for the purpose of performing a public service for a fixed period in return for a fair consideration, and without prejudice to the basic rights of those obliged to carry out such work"[3]. In this case, we can see that the compulsion to perform public service



with compensation is permissible. In the constitutions of some countries, liability for the use of forced labor has been established. For example, according to Article 23 of the Constitution of India, "Traffic in human beings and begar and other similar forms of forced labor are prohibited and any contravention of this provision shall be an offence punishable in accordance with law"[4]. Article 34 (Prohibition of Forced Labor) of the Constitution of Bangladesh prohibits all forms of forced labor and any contravention of this provision shall be an offence punishable in accordance with law[5]. In accordance with Article 18 of the Japanese Constitution, "No person shall be held in bondage of any kind. Involuntary servitude, except as punishment for crime, is prohibited"[6].

According to Article 12 (3) of the Basic Law of the Federal Republic of Germany, a member of the European Union, "forced labor may be imposed only on persons deprived of their liberty by the judgment of a court"[7]. Article 22 of the Constitution of Greece prohibits any form of compulsory work. In accordance with Article 106 of the Constitution of Latvia, forced labor is prohibited in which participation in the relief of disasters and their effects, and work pursuant to a court order shall not be deemed forced labor. According to Article 48 of the Constitution of Lithuania, "Forced labor shall be prohibited. Military service or alternative service, as well as labor which is executed during war, natural calamity, epidemic, or other urgent circumstances, shall not be deemed as forced labor. Labor which is performed by convicts in places of confinement and which is regulated by law shall not be deemed as forced labor either"[8].

The constitutions of many countries, especially the CIS countries, determine that forced labor may be allowed in emergency situations or based on a court order. According to Article 24 of the Constitution of Kazakhstan, "Everyone shall have the right to freedom of labor, free choice of occupation and profession. Involuntary labor shall be permitted only by a court sentence or in the conditions of a state of emergency or martial law". According to Article 28 of the Constitution of Kyrgyz Republic, "forced labor of citizens is prohibited, except in cases of war, natural disaster, epidemic, or in other extraordinary circumstances, as well as in accordance with execution of punishment per order of court"[9].

Article 35 of the Constitution of Republic of Azerbaijan entitled "Right to Work" stipulates the following norms: "Nobody may be forced to work. Employment contracts shall be concluded voluntarily. Nobody may be forced to conclude an employment contract. A court may order forced labor, the terms and duration of which are prescribed by law; there may be forced labor in connection with the execution of orders given by an authorized person during military service, or in



connection with the performance of work assigned during times of emergency or marital law”[10].

In this matter, how can we determine whether Uzbekistan's legislation complies with international legal standards, and whether international legal standards are being implemented into national law? In national legislative documents, the term “forced labor” is first used in Article 37 of the Constitution of the Republic of Uzbekistan. According to this article, any forced labor shall be prohibited, except as punishment under the sentence of a court, or in some other Instances specified by law [11]. According to the Constitution of Uzbekistan, forced labor is prohibited except in certain circumstances, and the legislation specifies these circumstances. The Constitution of the Republic of Uzbekistan does not clarify the definition of the concept of forced labor. Later, in Article 7 of the Labor Code of the Republic of Uzbekistan adopted in 1997, the concept of “forced labor” was defined for the first time. According to it, forced labor, i.e., forcing to perform work by the threat of any punishment (including as a means of maintaining labor discipline) is prohibited[12]. This definition partially corresponds to the definition contained in the International Labor Organization (ILO) Convention №29 on Forced Labor [13]. Due to the significant editing of the definition in the ILO Convention No29, a legal definition of forced labor was adopted with a serious shortcoming.

In addition, in Article 37 of the Constitution of the Republic of Uzbekistan, a strict list of cases that are not considered forced labor referred to in the legislation was required to be defined in the legislation regulating labor issues. This situation was provided for in Article 5 of the Labor Code of the Republic of Uzbekistan, which was adopted in a new version on October 28, 2022, and the following amendments and additions were made:

Article 5. The principle of freedom of labor and prohibition of forced labor
Forced labor is prohibited.

Forced labor means any work or service required from any person under threat of punishment, for which that person has not offered himself voluntarily. Punishment is understood as the application or threat of application to an individual of any measures of material, physical or mental influence, forcing this person to carry out labor activities in the absence of his voluntary consent.

Forced labor does not include:

performance of work of a military nature or work related to the passage of alternative service on the basis of the Law of the Republic of Uzbekistan “On universal military duty and military service”;



work, the performance of which is conditioned by the imposition of a state of emergency or martial law;

work performed as a punishment under a valid court sentence under the supervision of state bodies responsible for compliance with the law in the execution of court sentences[14].

In the course of the constitutional reforms being carried out today, the norms related to this issue are being further clarified. In particular, in the draft constitutional law "On Amendments and Additions to the Constitution of the Republic of Uzbekistan" it is proposed to add the following additions to Article 37:

"Forced labor in a different order than the order of serving the sentence according to the court's verdict or forced labor in other cases stipulated by the law is prohibited. Forced labor and the worst forms of child labor are prohibited and punishable by law". It is appropriate to briefly discuss child labor at this point, which is intended to become a constitutional principle. Child labor is work performed by persons under eighteen years of age that is dangerous or harmful to their mental, physical, social, and moral development and prevents their education. In addition to forced labor situations where the entire family is forced to work, child labor also refers to the performance of work under threat of punishment by third parties[15]. It is not always the case that every child who works is forced to do so. A child who is working voluntarily and without fear of punishment or coercion will suffer only child labor-related harm, and the signs of forced labor will not be apparent[16]. As defined in the 1999 ILO Convention No182 on Worst Forms of Child Labor, forced child labor is among the most harmful forms of child labor. In this Convention, the term "child" refers to anyone under the age of eighteen.

CONCLUSION

A comparative legal analysis of the concept of forced or compulsory labor in the constitutions of most countries shows that it is mutually compatible. The analysis also allows us to conclude that four methods are adopted by the world countries as a priority for strengthening the prohibition of forced labor:

- a) Strict prohibition of all forms of forced labor;
- b) Forced labor is generally prohibited, but may be permitted in exchange for certain compensation as a social obligation;
- c) Forced labor is prohibited, any violation of this prohibition is a crime;
- d) Forced labor is prohibited, but its use as a punishment for committing a crime is allowed.



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