

## **Correction of Convicts and its Basic Means in the Legislation of the Republic of Belarus**

---

**Darya Ivinskaya**<sup>1</sup>

**Abstract:** Today, the issue of re-socialization of convicts in the framework of the implementation of criminal and criminal-executive policy is very relevant. A large number of persons, after serving the sentence, return to the criminal way of life, therefore there is a need for more effective use of the means of achieving the goals of criminal liability through applying the means of convicts correction. Only a comprehensive, interconnected and interdependent application of all means of correction of convicts, in relation to all types of convicts, can contribute to the achievement of the objectives. The analysis of the means of correction of convicts, its content that is reflected in the criminal-executive legislation, consideration of doctrinal approaches to improving their content and the content of whole system of the means of correction is aimed to identify new ways of developing legislation and its application.

**Keywords:** correction of convicts, means of correction of convicts, established procedure for the execution and serving of punishment and other measures of criminal liability, educational work, socially useful work, receiving education by convicts and social impact.

### **Introduction**

The legislator at the present stage of development of criminal-executive rule-making establishes two objectives for the application of punishment and other measures of criminal liability: the correction of convicts and the prevention of the commission of crimes. That is why, in the context of the analysis of the norms of the criminal-executive legislation, the means of achieving the goals of criminal liability are identified with the means of correcting convicts.

The means of correction of convicts form a unified system of techniques and methods of influencing on convicts to achieve the goal of their correction,

---

<sup>1</sup> Senior lecturer, Law Faculty, Yanka Kupala State University of Grodno, Grodno, Republic of Belarus, e-mail: ivinskayadarya@gmail.com.

the goal which is understood as formation of convicts readiness to lead a law-abiding way of life. The content of methods of influence on convicts depends on the type of punishment or other measure of criminal liability that are imposed. The features of their use depend on the content of the repressive elements of a particular criminal-legal impact and the personal characteristics of the convicted person.

The correctional process involves a continuous impact on the personality of the convict, not only from outside, but also through the creation of internal incentives for correction. The use of means of correction involves an external impact on the convicted person from the subjects of correctional impact: employees of bodies and institutions executing measures of criminal-legal impact, representatives of state bodies, organizations regardless of ownership, mass media, public associations and religious organizations, representatives of science and culture and individual citizens.

### **Main part**

Correctional impact with the use of means of correction provided by the Penal Code of the Republic of Belarus involves the use of methods of labor, educational, physical, intellectual impact on a convicted person, different in content and form, changing his/her personal characteristics in order to achieve a socially significant result – correction of the convicted.

The questions of the sufficiency of means applied to the convict, the expediency of including new measures in the system, their correlation, the possibility of achieving the goals of criminal liability through their application, as well as the subjects of the correctional process are important because only the effective use of written above means allows to solve the problem of crime prevention.

As it was noted earlier, the purpose of applying punishment and other measures of criminal liability is to correct convicts and prevent the commission of crimes, both by convicts and others people. This goal received its consolidation in article 7 of the Penal Code of the Republic of Belarus (next – Penal Code). This article also indicates the main means of achieving the goals of criminal liability in the process of its application. The main means of achieving the goals of criminal liability, serving as a means of correcting a convict, are the established procedure for the execution and serving of punishment and other measures of criminal

liability, educational work, socially useful work, receiving education by convicts and social impact. These means are listed in the legislation as basic, which indicates that the list of means of correction of convicts is in fact open. However, each of the means specified in the legislation has independent significance for achieving the goals of criminal liability, and only their complex application allows to take into account the individualization of the criminal legal impact and to achieve the correction of the convicted person.

The established procedure for the execution and serving of punishment and other measures of criminal liability in legislation and scientific literature is identified with the regime of serving the sentence. In the Soviet legal literature, the concept of “regime” was defined as a system of measures by which penitentiary institutions strive to achieve their goals. In the modern criminal-legal doctrine, the regime is referred to punishments related to the strict isolation of a convicted person from society<sup>2</sup>, and to other types of punishments when the category “non-penitentiary regime” is used<sup>3</sup>. In accordance with article 73 PC, regime is defined as the procedure established by the legislation of the Republic of Belarus for the execution and serving of punishment, ensuring the protection and isolation of convicts, constant supervision of them, the performance of their duties, the exercise of their rights and legitimate interests, the safety of convicts and personnel, the separation of certain categories of convicts, different conditions of detention depending on the type of correctional institution appointed by the court, changing the conditions of serving the sentence depending on the behavior of convict.

Chapter 14 of the Penal Code is devoted to educational work with convicts. In accordance with part 1 of article 104 of the PC, educational work with persons sentenced to deprivation of liberty is a systematic activity of correctional officers, representatives of state and public organizations aimed at forming and

---

<sup>2</sup> A. Raskevich, Regime as a means of correction of convicts: penal problems / Bulletin of St. Petersburg University of the Ministry of Internal Affairs of Russia – 2010 – №1 (45). – 87-93.

<sup>3</sup> M. Manankova, Non-penitentiary regime in the light of international standards (historical aspect) / Problems of punishment and execution of the sentence in the criminal, criminal executive and criminal procedure legislation: Collection of materials of the scientific conference. – Kemerovo, 1992. – p. 65-66; M. Manankova, International legal standards for the application of criminal law measures not related to deprivation of liberty, and questions of their implementation: author. Ph.D. theses. – Tomsk, 1998. – p. 18-19; S. Barsuchenko, The mode of execution (serving) punishments and the problems of its legislative regulation / Law Enforcement Monitoring. – 2016. – №1 (18). – pp. 54-57.

strengthening convicted persons desire to be engaged in socially useful activities, conscientious attitude to work, compliance with the requirements of the legislation and the rules of conduct adopted in society, to increase their cultural level. Some types of punishment in themselves can be attributed to the varieties of the educational process. It is difficult to argue with the presence of an educational element in such types of sentences as corrective labor or community service. However, in the case of punishments not related to the strict isolation of the convict from society, the authorities or institutions that execute the punishment and other measures of criminal liability have the opportunity to have an educational impact on the convicted. For example, articles 23, 24, 31, 37 48<sup>1</sup>, 51 of the Penal Code indicate that when convicts are serving sentences in the form of community service, deprivation of the right to hold certain positions or engage in certain activities, corrective labor, restriction of liberty, body or institution that executes punishment and other measures of criminal liability, conduct educational work with convicts and have the right to call the convict for interviews and attend educational activities.

In the execution of punishments related to the isolation of a convicted person from society, educational work is the systematic work of correctional officers, representatives of state and public organizations. Educational work is aimed to form and strength convicts' desire to engage in socially useful activities, conscientious attitude to work, compliance with the requirements of the legislation and the rules of behavior adopted in society, to increase their cultural level.

According to the PC, the subjects that have an educational impact on convicted persons include the guardianship board and social tutors (educators) of convicted to imprisonment. All educational work is carried out taking into account psychological and pedagogical recommendations and is closely connected with such mean as social impact. On a voluntary basis, psychological assistance can be provided to convicted persons serving a sentence in correctional institutions, with the aim of adapting to the conditions of detention, overcoming conflicts, normalizing the mental state and neutralizing negative personality attitudes.

Article 49 of the Constitution of the Republic of Belarus states that everyone has the right to education. This constitutional right can be implemented within the penitentiary institutions. Convicted persons may receive education

(general secondary, vocational education), as well as undergo vocational training in correctional institutions while serving their sentence. The attitude of convicts to education is taken into account when determining the degree of their correction.

The possibility of receiving education in a penitentiary institution is absent during serving sentences in the forms of life imprisonment and arrest. However, when serving a sentence of life imprisonment, the administration of the correctional institution for convicts creates conditions for self-education that do not contradict the order and conditions of serving the sentence. An arrest is a detention of a convicted person in strict isolation for a period from one to three months, therefore the possibility of organizing an educational process with this type of punishment is not advisable.

The right to education of convicted persons serving a sentence of restriction of liberty with a referral to an open type correctional facility and convicted persons serving a sentence in a correctional colony under the conditions of settlement is exercised by receiving a basic extramural education in the territory of the Republic of Belarus.

According to modern legislation, every person sentenced to deprivation of liberty is obliged to work in places and at work determined by the administration of correctional institutions. This measure is dictated by several reasons. Firstly, in this way in for some types of convicts, the loss of their social functions and skills is prevented, in relation to the others – the “habit of work” is instilled, which later must be realized by the person who was freed from places of deprivation (restriction) of freedom, what form social attitudes of personality. Secondly, those sentenced to deprivation of liberty have the right to wages in accordance with the legislation of the Republic of Belarus, therefore, the maintenance of convicts is partially paid at the expense of their salaries. Thirdly, for people who are in the places of deprivation (restriction) of freedom, there is an opportunity for self-realization, which has a positive effect on the development of positive qualities in a person. The conditions and remuneration of labor of convicts are established in accordance with the legislation of the Republic of Belarus. For each individual subject, its physical, medical and personal characteristics are taken into account when selecting the type of work. Convicted persons who have reached the established retirement age, juvenile convicted persons, as well as convicted persons who are invalids of the I and II group shall be involved in work according

to their wishes in accordance with the legislation of the Republic of Belarus on labor.

Of all the mentioned means of correction for convicted persons, social impact is less regulated by the norms of criminal-executive law. This also concerns the substantive definition of forms of realization of social impact as a means of correction for convicts, which are diverse and depend on the subjects of its implementation, and may also be due to the type of punishment and other means of correction imposed (to a greater extent by the regime of its execution and serving the sentence).

Social impact as a mean of correction of convicts in the legislation of the Republic of Belarus does not have its terminological consolidation. As a result, the legislator has not determined a clear list of persons who are the participants in this type of legal relationship arising in the process of exercising correctional impact on convicts. Articles 105 and 106 of the Penal Code enshrine such forms of public participation in the penitentiary process for persons who have reached the age of majority, such as the guardianship board and social tutors (educators). As we noted earlier, these subjects also have an educational effect on convicts.

According to the PC, guardianship board can be established to assist the correctional institution administration in organizing the correction process. Their activities may be aimed at providing on receiving general secondary, vocational education and vocational training by convicts, strengthening the material base of a correctional institution, social protection of convicted persons, labor and household equipment released from correctional institutions. The activities of the guardianship board can also be directed at solving the issues of social protection of correctional workers and improving their professional skills. Guardianship boards are established as public associations and are registered in the manner established by the legislation of the Republic of Belarus. Consequently, it can be concluded that the creation and activities of guardianship board are subject to the regulation of the Law of the Republic of Belarus of 04.10.1994 N 3254-XII (amended on 04.11.2013) "On public associations". However, it is worth noting that in the law itself it is no mention about the guardianship boards. The subject structure of the guardianship board can be representatives of state bodies, organizations regardless of their form of ownership, representatives of the media, public associations and religious organizations, scientists and cultural figures, and individual citizens. There are no additional regulatory legal acts regulating the

activities of guardianship board, and to date no board of trustees has yet been established.

The institute of social tutors (educators), in our opinion, is also underdeveloped. Social tutors participate in the correction of those sentenced to deprivation of liberty, assist in working and living arrangements released from correctional institutions. The activity on the household arrangement of the persons being released can hardly be considered the implementation of the correctional process within the penitentiary institution. A representative of state bodies, other organizations, public associations and religious organizations, as well as any other persons capable of exerting an educational effect on convicts can become a social tutor, which significantly complicates the definition of the circle of persons involved in the correction of convicts.

In our opinion, it is impossible to deprive of attention and such subjects of influence as psychologists. Article 107 of the enal Code stipulates that convicts serving sentences in correctional institutions on a voluntary basis receive qualified psychological assistance in adapting to conditions of detention, overcoming conflicts, normalizing the mental state and neutralizing negative attitudes of the person.

Article 21 of the Penal Code defines two more subjects involved in the provision of social impact on convicts – these are public associations and supervising committee. The dual role of these actors is clearly enshrined in legislation. Public associations may exercise control over the activities of bodies and institutions that execute punishment and other criminal liability measures, and they also take part in the correction of convicts. Supervising committees have the same functions.

Supervising committees are composed of the chairman (deputy chairman of the executive committee (head of administration)), deputy chairman, secretary and 4-8 members of the commission from among the employees of local executive and administrative bodies, deputies of the respective Councils, representatives of trade unions and other organizations. The staff of internal affairs bodies, prosecutors, courts, as well as lawyers cannot be members of the supervising committees. The tasks of the supervising committees are to monitor the activities of the bodies executing punishment, medical and labor dispensaries, the procedure and conditions for serving convicted sentences, the application of preventive measures to them, the identification of violations and assistance in

eliminating them; rendering assistance to the bodies executing punishment in organizing the correctional process in relation to convicts and their rehabilitation, and to the local executive and administrative bodies in ensuring the re-socialization of persons released from places of detention or returned from medical-labor dispensaries. It must be noted that there is no mentioned their participation in the correction of convicts and the provision of corrective and educational impact on them among the tasks of the supervising committees. But in our opinion it seems that this function derives from the interpretation of legislation and their activities.

The question naturally arises: can public associations and supervising committees be called full-fledged subjects of public influence, or among their functions, control over the administration of the penitentiary institution prevails? In our opinion, we will attribute these subjects to the category of subjects that have an indirect social impact on convicts. This is due to the fact that these subjects can influence the improvement or worsening of the conditions of serving the sentence of convicts. For example, the transfer of convicts from the general to the strict regime, as well as from the strict to the general, is made in agreement with the supervising committees; by a reasoned decision of the head of the correctional colony, agreed with the supervising committees, convicted women who conscientiously related to work and who comply with the requirements of the regime may be allowed to live outside the correctional colony during the period of release from work for pregnancy and childbirth, as well as for the period until the child reaches three years of age; the transfer of life-sentenced prisoners from prison to a special-regime correctional colony for keeping in ordinary residential premises or from a special-regime correctional colony to a prison is carried out in coordination with the supervising committees.

Thus, we can single out a group of subjects of public control: public associations, including the guardianship board, supervising committees and commission on juvenile affairs (which deals with juvenile convicts). These subjects are subjects that have an indirect social impact on convicts, contributing to the achievement of the goals of criminal liability.

### **Summary**

Summing up, I would like to note that the modern Belarusian legislation is extremely lacking of clear regulation of both the concept of social impact and the



definition of the range of subjects involved in these legal relationships. It is also worth improving the regulatory framework governing the activities of subjects of society that have a corrective effect on convicted persons.

In our opinion, the category of “social impact” requires separate consolidation in the criminal-executive legislation of the Republic of Belarus. This means of influence on convicts is no less important than the regime, educational work, socially useful work and the possibility of receiving education, although today the possibilities of social impact are not sufficiently used as a means of correcting the convict. The subsequent social adaptation of a person is directly related to social impact, since it is through social influence that the convict can maintain contact with society and reintegrate into the society. When a person is placed in a correctional institution, his/her social environment changes, the subject falls under the negative influence of other convicts. Therefore, one of the goals of the state criminal-executive policy should be to strengthen the existing and create new public associations, as well as to use other forms of public participation in the correction of convicts who are serving or served sentences that are associated with strict isolation from society, which will create the opportunity and conditions for ensuring communication of the convict with civil society.