

THE ISSUE ON IMPROVEMENT OF FORCED LABOR SENTENCE OF MONGOLIA AND ENHANCING THE EFFECTIVENESS OF THE SENTENCE BASED ON SOCIETY

МОНГОЛ УЛСЫН АЛБАДАН АЖИЛ ХИЙЛГЭХ ЯЛЫГ БОЛОВСРОНГУЙ БОЛГОХ АСУУДАЛ БА НИЙГЭМД СУУРИЛСАН ЯЛЫН ҮР НӨЛӨӨГ ДЭЭШЛҮҮЛЭХ НЬ



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Хууль зүйн үндэсний хүрээлэнгийн
Хууль зүйн судалгааны төвийн бодлогын судлаач

Товч утга: Энэ илтгэлээр Монгол Улсад албадан ажил хийлгэх ял болон бусад хорихоос өөр төрлийн буюу нийгэмд суурилсан альтернатив ялыг хэрэглэж хэвших, эдгээрийн эрх зүйн орчинг өргөжүүлэх асуудлыг авч хэлэлцлээ. Гэмт хэрэгтнийг нийгэмд нь хүмүүжүүлэхийн ач холбогдол нь гэмт хэргээс урьдчилан сэргийлэх, рецидив гэмт хэрэгтнийг бууруулах, хорих ангийн ачааллыг бууруулах зэрэг олон талын ач холбогдолтой юм. Албадан ажил хийлгэх ялын биелэлтийг авч үзэхэд нийслэлийн хэмжээнд 2012 онд 92.4 %, 2013 онд 86.8 %, 2014 онд 71.6% хувьтай байгаагаас үзэхэд ялын биелэлт буурах хандлагатай байгаа төдийгүй зөвхөн тохижилт үйлчилчлэгээний компанид ажиллуулахаас өөр ажлын байр олддоггүй зэрэг хүндрэлүүд байгаа нь харагдаж байна.

Иймд 2015 оны Эрүүгийн хуульд шинэчлэгдэн орж байгаа нийтэд тустай ажил хийлгэх ялыг хэрэгжүүлэхдээ ажлын байрыг өргөжүүлэх энэ ялын үр нөлөөг дээшлүүлэх талаар анхаарах нь зүйтэй. Зөвхөн тохижилт үйлчилгээний компанид гудамжны хог цэвэрлүүлэх төдийгээр хязгаарлахгүйгээр мод тарих, уул уурхайн газар нөхөн сэргээлт хийх, эмнэлэг болон асрамжийн газарт настай хүн, хөгжлийн бэрхшээлтэй, өвчтэй хүмүүсийг асрах зэрэг олон ажлыг хийлгэж болох талаар судлах асуудлыг тус илтгэлээр дэвшүүлээ. Ер нь гэмт хэрэгтнийг нийгэмд нь хүмүүжүүлэхэд хорихоос өөр төрлийн ял оногдуулах, хорих ял эдлээд суллагдсан этгээдийг нийгэмд нь эргэн нэгтгэх гэсэн үндсэн 2 асуудал Монгол Улсын эрүүгийн хэрэг хянан шийдвэрлэх ажиллагааны тогтолцоонд тулгарч буйг анхаарах түүнчлэн энэ асуудалд байцаан шийтгэх ажиллагааг явуулж буй төрийн ажилтнуудаас эхлээд шашны үйл ажиллагаа явуулж буй энгийн сүсэгтнийг хүртэл олон нийтийн оролцоо чухал юм.

Hate crime not offenders.

Mongolian Criminal Code of 2002 provides for a new “forced labor sentences” convicts sentenced to do without salary for the benefit of society in the form of punishment without any isolation from their homes and environment. In the history of Mongolian penalty system and in the previous laws, this sentence was implemented under the name “correctional labor”. Also “the forced labor sentence” differs from “correctional labor”(convicts engage their previous work and some portion of their salary payroll goes to national income) in many aspects such as working without pay and purpose of helping and serving the society. In other words, then nature of the sentence of forced labor is a kind of work that is done for social and public interest, socially useful work, compulsory and will be unpaid.¹

¹ Altanzul, A “Current situation of Forced labor sentence and the issue of improvement of it”, 2007.

Some researchers say that forced labor has possibility to be more effective by reducing prison fill, cost savings and being conscious of their guilt and expiate by working for the good of society.² However, in modern society the government avoids hard work under in humane and strict conditions *not sentencing this punishment*. In 1990, adopted by the United Nations “impose custodial sentences, use the United Nations Standard Minimum Rules (Tokyo Rules) in paragraph 2 of Article 8 of this type of sentence reflects the principle of grounds for selecting.

Mongolian State 3 May 2015, the new draft of the Criminal Code “useful labor for the society” included the type of sentence, and it is defined “a person who has committed a crime will work unpaid in the place that was pointed out from the court”.³

This penalty is used in more than 60 countries of the world and the main representatives are Great Britain, the United States, France and Japan, China, India and Austria are listed that they have no use of this penalty.⁴

One. History of sentence of forced labor and its current situation, challenges in Mongolia.

In the Article 5 of the 1926 “trial of sentences” (Шүүх цаазын бичиг) defined the sentence, correctional task and methods of people’s protection and in the 3rd part there was a sentence that performs forced labor without imprisoning.⁵

In the Article 6 of the Law, the penalty period is specified not exceeds in 100days. In the 1929 the name changed into forced labor without imprisoning in and in the Article 8 of the Act, the penalty period is legalized not exceeds in 100 days too. In the “trial of sentences” (Шүүх цаазын бичиг) of 1934 it is named forced labor without imprisoning and in the Article 21 of the Law, this sentence is performed to discipline and correct the convicts and the period is ranged between a week and 6 months.

In the first Criminal code of 1942, there was a correctional labor sentence without imprisoning. This sentence was imposed for 14days up to a year and there is a clause saying convicts engage their previous work and 10 to 25 percent of their salary payroll goes to national income.

This sentence was imposed for and worked on a run that will with hold and pay 10-25per cent of national income provisions. As well as people who were unemployed are transferred to a penitentiary.⁶

Under-officers, middle and senior heads who are serving in the non-definite period military revolutionary demand, also under-officers and soldiers who are serving the military service for a definite period are prohibited to perform this sentence and they were sentenced to imprison for up to 2 months.

Forced labor is sentenced to people who have committed lighter and rather heavy crimes, even this sentence is performed to fulfill the purpose of correcting the convicts without imprisoning and without isolating them, it is considered that by touching on human rights this sentence involves the purpose of chastising the convicts.

Regarding the period of the sentence, it is measured by “hour” measurement and the sentence period will be calculated from the time when the convict begins his forced labor to he/she finished performing the sentence. Mongolian Criminal Law legislated

² Zumberelkham D, “Alternative sentences except from imprisonment”, 2009.

³ The Draft of Criminal Law of 2015, Article 5.4

⁴ Bayarsaikhan D, Comparative Criminal Law, Ulaanbaatar, 2011.

⁵ Adiyabazar D, Development of Criminal Laws of Mongolia since 1921, Ulaanbaatar, 1998, page 9.

⁶ Ibid.

that sentence period should last 100 to 500 hours at least 3 hours per day.

From the experience of other countries in the world in most of the countries measure the sentence period by hour. The period is assigned differently. For example in Russia and Kazakhstan it is 60-240hours, in the UK, France and Sweden it is 40-240 hours and in Armenia it is 360-1500.⁷

Forced labor sentence of Mongolia faces some difficulties during the implementation of the system of punishment. In the 50.1 of the Criminal Law Article 50 forced labor sentence does not have any finishing time of sentence and because of open period of time it is likely to have the opportunity to flee the sentence and reducing the efficiency of the sentence.

Depending on the legal regulation the ratio of forced labor sentence was lost. And the loss ratio has been corrected by an amendment the law. For example, as provided for Article 50, paragraph 50.3 of the Criminal Code, in Article 58, paragraph 58.3 it was affecting negatively to conviction of the sentence when 100-500 hours replaced to arresting sentence, it cannot reach the minimum period of time. In 1st of February 2008, according to the amendment of Criminal Law, they defined that "8 hours of forced labor sentence will be in proportion to a day of the arrest sentence". And it helped to improve legal regulation of conviction.

One of the challenges to implement forced labor sentence is authority, enforcing work place is not clear.

A research was done, on finding organizations, companies and workplaces which are available for forced labor by Criminological Research sector of National Legal Centre in 2005. According to result of the research there are 129 organizations and entities (governmental and non-governmental organizations, governmental industries and entities), 23 workplaces (builder, repairman, excavation, deliverer, translator, carpenter etc.) which are available for performing forced labor sentence. Currently, the sentence is performed to work for social services and accomplishment such as sweeping the street and cleaning the field.

According to the Bailiff Law, "when factor receives the court decision he/she should submit to chairman of the district governor and ask which organization the convict will be sent to."⁸ Thus, there is a served regulation in our country and it is defined that the chairman of the district governor assigns the place of sentence implementation and factor should put under control for every 30 hours for the sentence conviction.⁹

Passing a sentence based on defendant's personal situation is important for improving the effectiveness of the sentence. However, the researchers consider that there are occurrences that are affected by defendant's influence on environment and appearance in our practice.¹⁰

Thus, forced labor sentence should be imposed to the people who are productive in labor (not suitable for pregnant women, the disabled, minors, and for people with jobs), as well as the people who feel their guilt sincerely.¹¹ It is useful for effectiveness of the

⁷ Bayarsaikhan D, Comparative Criminal Law, Ulaanbaatar, 2011.

⁸ See the Bailiff Code of Mongolia, Article 96.2

⁹ "CONSIDERING THE PERSONAL ATTITUDE OF DEFENDANTS WHEN COURT IMPOSE FORCED LABOR SENTENCE", the Researchers team of Open Academy Forum, 2003.

¹⁰ Criminal Code of Mongolia, 2002, Article 50.

¹¹ From the research report which named "CURRENT SITUATION OF THE CONVICTS' HUMAN RIGHT IN MONGOLIA", Ulaanbaatar, 2015.

sentence, solving the problems and challenges facing to the sentence implementation, diminishing the number of case rate, socializing the convicts and preventing convicts from committing crime again.

Two. Issue on improving the effectiveness of the society based correctional sentence in Mongolia.

Correcting the convicts in the community is a complex issue of correcting individuals in their natural environment they are living, without isolation, without imprisonment, reunification and reintegration. Most countries are facing the challenges such as financial burden, problem of overloading of prison due to imprisoning. It has been a headache for bailiff service in Mongolia as well. By correcting the convicts in the society without imprisoning will not only help to solve the problem of overloading the prisons but also reduce the number of recidivism criminals. We can see the level of reunification task from the number of the convicts who recommitted the crime. The 47.8% of total crime offenders who are in jail have recommitted the crime in Mongolia.¹²

Imposing alternative sentences except from imprisoning is a main situation of correcting the convicts in the community. Our jurists, prosecutors, lawyer have to impose the sentence by taking this issue into their account.

Currently legal framework of correcting the convicts in their community is limited by probation in the society not in the prison. In other words, convicts who are sentenced to imprisonment can have an opportunity to be probated if court decision approves the convicts do not have to imposed to imprisonment on consideration of following aspects such as the person is committed to serious crimes for the first time, the social danger of the crime, extent, and the personal condition of the person who has committed a crime and circumstances of crime paid for damage caused by the crime or paid for the convicted damage.¹³ In this situation court will impose them to be under control for 1 to 5 years. Correcting the convicts in the community is different from probation system and sentence system in other countries by being a sentence that implemented after court imposes.

Probation offices in foreign countries are usually the systems that limit their right of freedom and control the criminals and it is peculiar to impose sentences except imprisoning. Even the involvement of governmental organization or prison administration, workers of the prison, police organization and non-governmental organizations is increasing rapidly for convicts to reunite to the community after imprisoning, it is true that they are still having the problems with being provided by work place, educating themselves and finding their position in society. In the United Nations Standard Minimum Rules (Tokyo Rules) explains the importance of community participation in the upbringing of society for the offender correctional significant.

In the Article 17.1ofthe Code, they said that public participation becomes the most important source to help convicts to communicate to their families and to the society. It is warned to work hard try making efforts about that issue. For example, in Japan, there are professional and governmental probation services are working and there are volunteer probation officers who implement the correctional sentence. From Asian countries, Japan is a classic example of country that considers social participation more importantly. More than 60 years of history, in this voluntary service with 48,000

¹² Criminal Code of Mongolia, 2002, Article 61.1.

¹³ <http://cd.gov.mn/wpcontent/downloads/>

employees cooperate with professional probation activities to control the offenders in the society and life, but also play a role in helping law granted legal status and ranks.

Reuniting the convicts to the community is done by governmental organizations, employees, religious organizations non-governmental organizations, international organizations and companies in Mongolia. Participation rate of religious organizations is higher than the rate of Non-governmental organizations, social workers are playing the main role of reuniting the convicts to the community. In the purpose of socialization, local, other governmental and non-governmental co-operation agreement was made with the 47 organizations.¹⁴

Conclusion

In this report we discussed the issue of using the forced labor sentence and other society based alternative sentences and the issue of expanding the legal framework for them. The importance of correcting criminals in the society is to prevent crime, to reduce recidivism criminals, to reduce the overload of prison. By correcting the convicts in the society we will provide an opportunity to prevent them not committing crime again. For example, 50.4% of people who are imposed prison sentences are recidivism criminals who had committed crime twice and more times, 37.2% of them have committed a crime of violence and greed motive.

Percentage of performing of forced labor sentence has been 92.4% in 2012, 86.8% in 2013 and 71.6% in 2014 in the capital city of Mongolia. It looks that the performance of this sentence has been reducing as well as there has been challenges to not find appropriate job's kind except to clean street.

In the draft of Criminal Code of 2015, there is regulation about the sentence of useful labor in the society and the authority must attend to change forced labor sentence effectively. For instance, adequate authority must make a list which is determined all jobs and exact places to work. Furthermore, court has to decide the places to work from the list and it means that governor will not send convicts to work place.

So, the offenders will work in the wide range field such as to plant a tree, to care old and disabled people and restore polluted environment etc.

The issues of correcting the convicts in the society without imprisoning, especially having them work socially useful labor, reuniting them after their imprisonment have become the main challenges that faced to Mongolian Criminological imposing activity. The result of failure in reuniting them to the society is appeared that it becomes the beginning of disturbing social peace, hate the communities in which they live, and even commit the crime again but the crime is more serious and dangerous than before. For example, the person who imprisoned for theft and robbery offenses has released by the law of amnesty before, violated a min or girl and then killed. It is an example of convict's becoming more violent and cruel and they are developing the operating methods. A base of increasing the participation of the public is to establish specialized and good probation office that is able to take full control on kinds of convictions except imprisoning in Mongolia.

As well as the governmental and non-governmental organizations have to cooperate to help providing jobs for implementation of forced labor sentences, work to have a special system of controls. In world countries probation offices are state institution, have set up a very good legal basis for cooperation with other governmental and non-

¹⁴ From the research report which named "CURRENT SITUATION OF THE CONVICTS' HUMAN RIGHT IN MONGOLIA", Ulaanbaatar, 2015.

governmental organizations.

Thus, a crime under the draft law on implementation of limiting the freedom sentence, non-custodial sentences, and probation officers should have handcuffs that inform the specific information to develop technological innovation. Japan confirmed that involving volunteers to probation office is one of the best ways to increase public participation and we have to pay regard to introduction of the experience.

In general, a low level of crime rate, to have peace with social security are major goals of any state, in order to reach that result, we have to consider on improving socially based policy of criminal punishment, revising the criminal policy.

Therefore, I would like to note that it is extremely important to impose the criminals with other kinds of sentences except imprisoning like a forced labor and correct the convicts in their society in Mongolia.