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Comparative Legal Analysis of the Administrative Penalty "Unpaid Work for the Benefit of the Community" and Probation Measures "Unpaid Work for the Benefit of the Community" and "Corrective Labour"

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Abstract

This article analyzes the newly introduced administrative penalty "Unpaid work for the benefit of the community" along with relevant literature. The specific laws regulating this penalty are examined. In parallel, probation measures such as "Unpaid work for the benefit of the community" and "Corrective labour" are also analyzed. The similarities and differences between the administrative penalty and probation measures are highlighted. Additionally, potential complications that may arise in the administrative penalty proceedings are identified, and de lege ferenda proposals for improving the current legislation are presented.

Keywords: administrative penalty, unpaid work for the benefit of the community, imposing administrative penalties

Introduction

The administrative penalty "Unpaid work for the benefit of the community" was unfamiliar to the Bulgarian legal system until its introduction by the legislator in 2020 (Law on the Amendment and Supplement to the Law on Administrative Violations and Penalties, promulgated in State Gazette No. 109 of December 22, 2020, effective from December 23, 2021). This introduction can be considered one of the most significant changes in the field of administrative penalties.

Probation and probationary measures, on the other hand, have been regulated by the Criminal Code and have been in practice since 2005. Despite the identical names of the two institutes, they reveal significant differences.

Analysis of the New Legal Framework in the Law on Administrative Violations and Penalties (LAVP) for the Penalty "Unpaid Work for the Benefit of the Community"

The administrative penalty "Unpaid work for the benefit of the community" is regulated in the Law on Administrative Violations and Penalties (LAVP). According to Article 13, paragraph 2 of LAVP, for a repeated or systematic administrative violation, unpaid work for the benefit of the community can be provided, which can be imposed either independently or alongside another penalty under paragraph 1. According to the new provision, Article 16a of LAVP, unpaid work is work performed for the benefit of the community without restricting other rights of the punished individual. The duration of unpaid work cannot be less than 40 hours and more than 200 hours annually for no more than two consecutive years.

The law does not prohibit the imposition of unpaid labor for the benefit of society on minors - it is possible to impose it on persons who, at the time of committing the administrative offense, have reached the age of sixteen, but have not reached the age of eighteen. Member. 58b, paragraph 5 of the Law on Administrative Violations and Penalties provides that when examining a file against a minor offender between the ages of sixteen and eighteen, his parents, respectively guardians. Their absence is not an obstacle to the consideration of the case unless the court finds their participation necessary.

Unlike other administrative penalties provided in LAVP, the imposition of unpaid work for the benefit of the community is determined by the court. According to Article 58a of LAVP, when unpaid work for the benefit of the community is provided for the administrative violation, the competent official under Article 37, paragraph 1 sends the file to the administrative penal authority, which submits it for resolution to the relevant district court within three days of receiving it. The district court reviews the file in a composition of only one judge and in an open court session in the presence of the offender. The parties in this proceeding are the administrative penal authority and the offender, who has the right to legal defense. LAVP grants the district court three options: to impose a penalty and a coercive administrative measure; to send the materials to the relevant prosecutor for criminal proceedings if there is sufficient evidence of a crime of general nature; or to acquit the offender if the conditions for imposing a penalty are not met.

According to Article 81a, paragraph 1 of LAVP, the penalty of unpaid work for the benefit of the community is executed by the probation service at the offender's current address, and Article 81b, paragraph 2 stipulates that unpaid work is carried out at facilities of the State Enterprise "Prison Fund" and facilities approved by the respective probation council. In the execution of the penalty of unpaid work for the benefit of the community, Articles 207-208, 225, 227, and 231 of the Law on the Execution of Penalties and Detention and Articles 254-257 of the Regulation for the Application of the Law on the Execution of Penalties and Detention also apply.

The decision imposing the penalty of unpaid work for the benefit of the community is subject to cassation appeal before the administrative court on the grounds provided in the Criminal Procedure Code and following the procedure of Chapter Twelve of the Administrative Procedure Code, unless otherwise provided by law, within 14 days of its issuance. The administrative court reviews the case in a composition of three judges in an open session no later than three days from the date of receipt of the complaint or protest, and its decision is final (Article 63a of LAVP). The administrative penalty is not executed if six months have elapsed since the entry into force of the act imposing it.

Legal Regulation of the Administrative Penalty "Unpaid Work for the Benefit of the Community" in Special Laws

It is also important to note that in addition to LAVP, the penalty "Unpaid work for the benefit of the community" is provided as a separate penalty in the Decree on Combating Petty Hooliganism (DCPH) and the Law on the Protection of Public Order during Sports Events (LPPOSE). In the Forest Act (FA), on the other hand, unpaid work for the benefit of the community is provided as an alternative to a fine.

Legal Regulation in the Decree on Combating Petty Hooliganism (DCPH)

Article 1, paragraph 2 of DCPH stipulates that unpaid work for the benefit of the community is imposed in cases of repeated petty hooliganism. In such a case, after an act under Article 2 of the Decree is drawn up, the head of the respective structural unit of the Ministry of Interior or the person authorized by him immediately, but no later than 24 hours, submits the file for resolution by the district judge, who reviews the file submitted by the Ministry of Interior in an open court session no later than 24 hours from its submission. When considering the file, the offender, who has the right to legal defense, must be summoned, and the relevant prosecutor must be notified. According to Article 6 of DCPH, the district judge has several options: to impose the respective administrative penalty; to terminate the file by sending it to the respective commission for combating antisocial manifestations of minors and juveniles; or to acquit the person. If signs of a crime are found during the review, the file is sent to the relevant prosecutor. The decision imposing the penalty of unpaid work for the benefit of the community is subject to appeal within 24 hours of its issuance before the relevant regional court on cassation grounds provided in the Criminal Procedure Code, which reviews the case in a composition of three judges on the day of its receipt and issues a reasoned decision that is final (Article 7 of DCPH).

It should be noted that neither DCPH nor its implementing regulations contain provisions regulating the execution of the penalty of unpaid work for the benefit of the community. According to Article 9, paragraph 2 of DCPH, the provisions of LAVP apply accordingly to issues not regulated by this decree.

Legal Regulation under the Law on the Protection of Public Order during Sports Events (LPPOSE)

An antisocial act (sports hooliganism) under the meaning of LPPOSE is an act that does not constitute a crime under the Criminal Code and is committed in the sports facility or sports zone before, during, or immediately after the sports event, as well as when traveling to or returning from the sports facility in connection with the sports event, expressed in:

1. Carrying flags, posters, and banners displaying texts, images, abbreviations, and symbols inciting hatred and violence, containing offensive qualifications, or personifying ideologies declared illegal;
2. Refusal to comply with orders from responsible persons engaged in the organization, security, or safety of the sports event or police officers;
3. Overcoming barrier devices, structures, and installations located in the sports facility or sports zone;
4. Invading the sports field;
5. Starting and maintaining a fire;
6. Throwing objects;
7. Wearing masks and actions for completely covering the face or parts of it, making identification difficult;
8. Using obscene language, other indecent expressions, gestures, and behavior that are particularly vulgar, as well as expressions and chanting inciting hatred based on racial, ethnic, or religious grounds;
9. Carrying weapons and items that can be used as weapons; ammunition; sprays with protective gas with caustic or coloring substances; signal rockets, explosive devices, pyrotechnic articles, and other dangerous means or their separate components; narcotics and other intoxicating substances, as well as other substances and items that can be dangerous to the lives and health of others;
10. Provoking or participating in fights;
11. Using the items mentioned in item 9;
12. Assaulting athletes, judges, police officers, or other persons engaged in the organization, security, or safety of the event, as well as medical personnel, journalists, photo reporters, and operators;
13. Destroying or damaging property;
14. Using flags, posters, and banners displaying texts, images, abbreviations, and symbols inciting hatred and violence, containing offensive qualifications, or personifying ideologies declared illegal.

According to Article 30, paragraph 3 of LPPOSE, for sports hooliganism, the administrative penalty of unpaid work for the benefit of the community can be imposed alongside other penalties under Article 30, paragraph 1 of LPPOSE. The imposition of the penalty is carried out in the manner provided for the consideration of cases for petty hooliganism under DCPH. The provisions of LAVP apply accordingly to the execution of the penalty of unpaid work for the benefit of the community in LPPOSE. Additionally, the respective court must inform the Ministry of Youth and Sports about the act or decision within three days of its issuance.

Legal Regulation under the Forest Act (FA)

The penalty " Unpaid Work for the Benefit of the Community " was introduced by the legislator as an alternative to the fine in the Forestry Act for repeated violations. Pursuant to Art. 258 of the Law on Forests, a person who carries out activities in the forest territories without possessing the relevant legal capacity shall be punished with a fine of BGN 100 to BGN 300, if no heavier penalty is provided. When the cited violation is committed repeatedly, the penalty is a fine of BGN 200 to BGN 400 or Unpaid work for the benefit of the community. Article 259 of the same law stipulates that a person who carries out forestry practice without being entered in the register under Art. 235, as well as a person who is entered in the register, but carries out an activity that is not specified in his certificate of registration. When the violation is committed again, the penalty is a fine of BGN 400 to BGN 1,000 or Unpaid work for the benefit of the community. The next act, for which the Law on Forests provides for a penalty of Unpaid work for the benefit of the community, is outlined in Art. 266 of it, namely cutting, hauling, loading, transporting, unloading, acquiring, storing, processing or disposing of wood and non-wood forest products, carried out by a natural person in violation of the law and the by-laws on its implementation. The prescribed punishment is a fine of BGN 1,000 to BGN 10,000 or Unpaid work for the benefit of the community.

Here, like the Decree on Combating Petty Hooliganism, there are no legal norms that would regulate the procedure for imposing and executing the penalty of Unpaid work for the benefit of the community, such as Art. 277 of the Law on Forests stipulates that the drawing up of acts, the issuance, appeal and execution of criminal decrees shall be carried out in accordance with the Law on Administrative Violations and Penalties.

The term probation is of Latin origin and is associated with the idea of testing something or someone, putting it to the test[1]. Historically, probation appeared in the fifties of the twentieth century[2]. At its inception, probation was an alternative sanction to incarceration rather than a punishment, aiming to achieve re-education of the offender[3]. In recent decades, one of the leading trends in criminal policy in a global aspect has been to reduce the use of imprisonment and replace it with alternative sanctions and measures, including community ones[4]. With the Law on Amendments and Supplements to the Penal Code (Penal Code), SG No. 92 of 2002, probation was introduced into Bulgarian criminal law, starting to be applied in 2005. Probation is a set of control and impact measures without imprisonment, which are imposed together or separately. K. Barth defines probation as "a system of measures for out-of-prison treatment of offenders, which are applied for a period of time determined by the court in order to socialize them[5]. It is intended to be imposed on persons who have committed crimes with a low degree of public danger[6]. It is important to note that on April 3, 2009 in SG. No. 25 was promulgated the Law on Execution of Punishments and Detention in Custody. The law enters into force on 01.06.2009, and articles 200-232 are dedicated to the execution of the probation sentence. Additionally, the implementation is regulated in Art. 221-267b of the Regulations for the Implementation of the Law on Execution of Sentences and Detention in Custody.

Probation measures are exhaustively listed in Art. 42a, para. 2 of the Criminal Code, and they are six in number, namely: mandatory registration at current address; mandatory periodic meetings with a probation officer; restrictions on free movement; inclusion in professional qualification courses, social impact programs; correctional labor; unpaid work for the benefit of the community.. Paragraph 3 of the same article determines the duration of probationary measures, such as mandatory registration at the current address, mandatory periodic meetings with a probation officer, restrictions on free movement and inclusion in professional qualification courses, social impact programs, are imposed for a duration of 6 months up to three years. The probationary measure of correctional labor is imposed for a period of three months to two years, and the probationary measure of unpaid work for the benefit of the community from 100 to 320 hours per year for no more than three consecutive years. All persons sentenced to probation must be subject to probation measures, mandatory registration at a current address and mandatory periodic meetings with a probation officer.

The penalty of probation is imposed for a committed crime as an alternative to imprisonment, in contrast to administrative penalties, which are imposed for committed administrative violations. The convicted person actually serves the sentence, but not in a prison environment. The execution of the probation sentence is regulated in the Law on the Execution of Sentences and Detention in Custody and the Rules for its Implementation.

THE PROBATION MEASURE "UNPAID WORK FOR THE BENEFIT OF THE COMMUNITY"

The probation measure "Unpaid work for the benefit of the community" is imposed for a certain period - from 100 to 320 hours per year for no more than three consecutive years (art. 42a, paragraph 3, item 3 of the Criminal Code), as there is also a legal prohibition to be imposed on minors under the age of 16. Art. 200, paragraph 1 of the Law on Execution of Punishments and Detention in custody states that the probation sentence is carried out by the probation services.

[1] Stoinov, A. Criminal law. Common part. Probation. p., 2005, p.4;
[2] Stoinov, A. Criminal law. Common part. Probation. p., 2005, p.99;
[3] Stoinov, A. Criminal law. Common part. Probation. p., 2005, p.99;
[4] Dobrinka Chankova. "SOME CURRENT ISSUES RELATED TO THE IMPOSITION AND IMPLEMENTATION OF ALTERNATIVE SENTENCES". Law, Politics, Administration no. 1, 2021 p.1;
[5] Bart, K. Alternative measures of criminal punishment – In: Alternatives to imprisonment in the Republic of Kazakhstan. M., 2000, p. 66;
[6] Nadezhda Krasteva. "SOME PROBLEMS IN IMPLEMENTING THE "PROBATION" PUNISHMENT". Law, Politics, Administration No. 1, 2021 p. 29;

According to Art. 201 of the Law on Execution of Sentences and Detention in Custody, probation services: assist the court in choosing an appropriate punishment and appropriate type of probation measures; organize and implement the probation measures and restrictions for the convicted; ensure the necessary penal-executive impact for correction and re-education of the convicted persons and achieving the goals of the punishment; work in cooperation with state bodies, governmental and non-governmental organizations for the resocialization of convicts. In the area of operation of each district court, probation councils are established, which may be designated as the authority of the probation services. The composition of probation councils is normatively defined in Article 202, Paragraph 3 of the Law on Execution of Punishments and Detention in Custody - Chairman - Probation Officer or Legal Counsel from the relevant territorial office; members - representatives of municipalities, regional offices of the Ministry of Internal Affairs, territorial structures of health care, education, social care and employment services. A prosecutor from the relevant district prosecutor's office participates in the meeting of the council, and the district prosecutor supervises the legality of the activities of probation services and probation councils in accordance with the Law on Judicial Power (JSV). It is the probation board that decides which are the sites where unpaid work for the benefit of society is performed.

An important aspect of executing the probation sentence, which is crucial for any punishment, is the commencement of execution. According to Article 208, paragraph 1 of the Law on the Execution of Sentences and Detention, this is the day the convicted person appears before the probation officer. Corresponding to this appearance is the obligation of the probation officer to summon the convicted person within three days of receiving the court act, in accordance with the Criminal Procedure Code, to appear for the execution of the sentence. The execution of the probation measure of unpaid work for the benefit of the community is organized by the probation officer. The head of the regional or district service "Execution of Sentences" issues an order determining the site for the unpaid work for the benefit of the community. The unpaid work for the benefit of the community is performed at sites of the State Enterprise "Prison Fund" and sites approved by the respective probation council, taking into account the work skills, qualifications, and work capacity of the convicted person. The unpaid work for the benefit of the community cannot be performed for the benefit of private individuals, sole traders, or commercial companies without state or municipal participation. The Law on the Execution of Sentences and Detention allows the work to be performed for the benefit of citizens who have been victims of crimes, with their explicit consent and that of the convicted person.

When performing unpaid work for the benefit of the community, it is necessary to ensure healthy and safe working conditions. The convicted person sentenced to community service must comply with the internal rules of the site where the work is performed and work conscientiously. Article 256, paragraph 3 of the Regulations for the Application of the Law on the Execution of Sentences and Detention stipulates that the convicted person must declare in writing to the probation officer that they are aware of the conditions for performing unpaid work for the benefit of the community, the rules for healthy and safe working conditions, the internal rules of the site, and their conscientious attitude towards the execution of the imposed measure. In the event of a work accident, the employer where the unpaid work for the benefit of the community is performed draws up an accident report and sends it to the probation service. The head of the regional or district service "Execution of Sentences" informs the General Directorate for the Execution of Sentences and organizes the procedures according to the Regulation for the Establishment, Investigation, Registration, and Reporting of Work Accidents.

In theory, it is argued that, as regulated, the measure discussed here could turn probation into a drastic and severe punishment[7]. According to Professor Stoynov, the regulation of unpaid work for the benefit of the community is in contradiction with Article 48, paragraph 4 of the Constitution, which states that no one can be forced to perform forced labor[8]. The unpaid work for the benefit of the community is: a) work or service; b) performed under the threat of some punishment (the possibility of another probation measure or imprisonment by the court); and c) performed without the consent of the person performing the work. According to Stoynov, all characteristics of forced labor as defined by the International Labour Organization's Convention on Forced or Compulsory Labour are present.[9]

[7] Stoyanov, E. Criminal law. S. 2008, p. 108; Stoinov, A. Criminal law. Common part. Probation. S., 2005, p. 24
[8] Stoinov, A. Criminal law. Common part. Probation. S., 2005, p. 24
[9] Stoinov, A. Criminal law. Common part. Probation. S., 2005, p.27; Stoyanov, E. Criminal law. S. 2008, p.109

PROBATION MEASURE "CORRECTIVE LABOR"

According to Article 43, paragraph 1 of the Criminal Code, the probation measure "Corrective Labor" is carried out at the workplace of the convicted person and includes deductions from their salary ranging from 10 to 25 percent in favor of the state. The time during which this measure is served does not count towards employment tenure. This refers to the employment tenure under Article 155, paragraph 2 of the Labor Code, which is significant for acquiring the right to leave, the amount of leave, and additional remuneration for prolonged service. In practice, the insurance tenure for retirement (Article 68 of the Social Insurance Code) is similarly considered, although there is no legal basis for such identification. Regarding the insurance tenure under Article 40 of the Social Insurance Code for monetary compensations, not recognizing it would deprive the person serving the sentence of substantial social rights and benefits, which should not be considered restricted unless explicitly stated in the criminal law.[10]

This probation measure is imposed for a period of three months to two years and does not apply to individuals who were under 16 years old at the time of the crime. According to Professor Anton Girginov, corrective labor contains three repressive elements[11]. The first is the deduction of 10 to 25 percent from the labor remuneration in favor of the state. The second is that the time during which the measure is served does not count towards employment tenure. The third is that failure to comply with the measure does not result in its dismissal without consequences. When the convicted person becomes unemployed, the court replaces the remaining corrective labor with community service, where one hour of community service is assigned for each day of the remaining corrective labor. In this case, the duration of the community service can be below the minimum stipulated in Article 42a, paragraph 3, item 3 of the Criminal Code. The same applies when the convicted person leaves the workplace where they are serving the sentence and fails to notify the probation officer of their new workplace within one month.[12]

To impose the probation measure "Corrective Labor," it is a necessary condition that at the time of the sentencing, the court establishes that the defendant is employed under an employment or official relationship. The term "work" under Article 43, paragraph 2 of the Criminal Code should be understood as the activity of individuals who are workers, employees, or civil servants under Article 1, paragraph 1 and Article 61 of the Labor Code, and Article 2, paragraph 1 of the Civil Servant Act, within and for the performance of their employment or official duties, outside the cases under Section IX of Chapter V of the Labor Code, for which they receive remuneration at a statutory rate and accrue employment tenure. These restrictions are imposed by the fact that the content of the measure "Corrective Labor" affects precisely these rights. Activities representing additional labor under Chapter V, Section IX of the Labor Code, such as community service, personal business, freelance work, and civil contracts, authorized craft and other activities without recognition of employment tenure or without remuneration, are excluded from the term. Organizations of foreign and international public law entities, which would not fall under our national penal enforcement jurisdiction, are also excluded from the category "workplace" under Article 43, paragraph 1 of the Criminal Code.

SIMILARITIES AND DIFFERENCES BETWEEN THE ADMINISTRATIVE PENALTY " UNPAID WORK FOR THE BENEFIT OF THE COMMUNITY " AND THE PROBATION MEASURES "UNPAID WORK FOR THE BENEFIT OF THE COMMUNITY" AND "CORRECTIVE LABOR"

There are indeed many similarities between the probation measures "Unpaid work for the benefit of the community," "Corrective Labor," and the administrative penalty "Unpaid work for the benefit of the community." Both probation measures and the administrative penalty are forms of state coercion applied to the offender. Both aim to warn and rehabilitate the offender towards compliance with the established legal order and to have an educational and preventive effect on other citizens. Probation measures and administrative penalties are imposed by a court and are served outside of places of imprisonment. Both the imposition of a probation measure and the imposition of an administrative penalty are subject to appeal. The manner and process of serving both penalties are regulated by the Law on Execution of Sentences and Detention and its implementing regulations.

[10] Dimitar Genchev "The penalty of "corrective labor without imprisonment" and the probationary measure "corrective labor". Legal Thought 2:52-61.
[11] Girginov, A. Criminal law of the Republic of Bulgaria. General Part. Course Lectures. S. 2009, p. 287.
[12] Stoinov, A. Criminal law. Common part. Probation. S., 2005, p. 22

Despite this, the fundamental difference is that probation measures are imposed for committing a crime, while the administrative penalty of unpaid work for the benefit of the community is imposed for committing an administrative violation. Administrative penalty proceedings are initiated by drawing up an act to establish the administrative violation, which is absent in the imposition of probation. Another difference lies in the consequences of non-compliance with the imposed penalty. In case of non-compliance with the imposed probation measure, the court, upon the proposal of the probation council, has two options outlined in Article 43a of the Criminal Code. One option is to impose another probation measure, and the other is to replace the probation measure entirely or partially with imprisonment, where two days of probation are replaced with one day of imprisonment. In this case, the term of imprisonment may be below the minimum stipulated in Article 39, paragraph 1 of the Criminal Code.
If, after the expiration of the calendar period for serving the administrative penalty, the specified number of hours is not worked, the obligation to work off the hours is extinguished, which does not provide the necessary guarantee for the execution of the penalty.

DE LEGE FERENDA/ FUTURE LEGISLATIVE IMPROVEMENTS

Based on the fundamental difference between the penalties highlighted above, it is necessary to refine the legal framework related to the imposition of the administrative penalty of unpaid work for the benefit of the community. Attention must be paid to the decision that allows the penalty to be imposed simultaneously with another administrative penalty. In this sense, Tsvetan Sivkov points out that such mixing is inadmissible, and one penalty cannot be both primary and additional. The possibility of imposing two penalties for one violation is a gross violation of the principle of non bis in idem and is an expression of excessive state repression towards acts that do not reveal a high degree of public danger.

CONCLUSION

After analyzing the administrative penalty "Unpaid work for the benefit of the community" and the probation measures "Unpaid work for the benefit of the community" and "Corrective Labor," as well as highlighting the similarities and differences, it is evident that the new administrative penalty significantly affects the legal sphere of the convicted person and can be considered highly repressive. Future refinement of the texts of the Law on Administrative Violations and Penalties related to the imposition of the penalty is necessary to fully achieve the goals of administrative punishment.

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