

COMPARING THE SOVIET LEGAL ORDER AND SOME CONTEMPORARY EUROPEAN LEGAL ORDERS

Maryna Vahabava^{*}

Abstract

This contribution aims to illustrate the legislation providing criminal prosecution in the Soviet Union for systematic vagrancy and parasitism. It analyses in detail such legal provisions and their evolution over time, until the fall of the USSR. The first part is focused on the right to work in the Soviet Constitution, in order to go beyond a mere description of bizarre penal provisions and try to understand their actual role in the light of the socialist conception of labour inspiring the legal order of the USSR, where work was considered both as a universal social right and a universal social duty and structural unintentional unemployment was excluded by the socialist system of production. The concluding remarks explore the connecting thread of this article, the legal conception of work, highlighting how its consideration in a society, as a right and a duty or as a commodity, basically depends on the relations of production and on the history and the present of the social conflict, and how, in turn, this societal consideration determines the approach and the priorities of the lawmaker towards unemployment, severely fighting it, hesitantly alleviating some of its more dangerous consequences or even implicitly fostering it, in a certain amount, as part of the market mechanism.

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^{*}Post-doc Researcher, Scuola Superiore sant'Anna. studiolegalevahabava@gmail.com

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Keywords

Vagrancy, Begging, Parasitic Lifestyle, Soviet Criminal Law, Right To Work, Welfare

1. Introduction

Consistently with the topic of the Juris Diversitas 7th General Conference “The dark side of the law”, concerning “bizarre” and curious laws in the world, at least in the eyes of the Western lawyer, this contribution aims to illustrate the legislation providing criminal prosecution in the Soviet Union for systematic vagrancy and parasitism. First of all, par. 2, with all its subparagraphs, analyses in detail such legal provisions and their evolution over time, until the fall of the USSR. Par. 3 focuses on the right to work in the Soviet Constitution, in order to go beyond a mere description of bizarre penal provisions and try to understand their actual role in the light of the socialist conception of labour inspiring the legal order of the USSR, where work was considered both as a universal social right and a universal social duty and structural unintentional unemployment was excluded by the socialist system of production. Finally, the concluding remarks (4) explore again the connecting thread of this article,

the legal conception of work, highlighting how its consideration in a society, as a right and a duty or as a commodity, basically depends on the relations of production and on the history and the present of the social conflict, and how, in turn, this societal consideration determines the approach and the priorities of the lawmaker towards unemployment, severely fighting it, hesitantly alleviating some of its more dangerous consequences (misery, social anger) or even implicitly fostering it, in a certain amount, as part of the market mechanism.

2. Engaging in vagrancy, begging and leading a different parasitic lifestyle in the Criminal Code of the RSFSR.

One of the most discussed and bizarre laws of Russia is the one that provides for liability in case of parasitic lifestyle. According to article 209 of the Criminal Code of the Russian Soviet Federative Socialist Republic (RSFSR) named “Systematic vagrancy or begging” and “for parasitism”: *the systematic practice of vagrancy or begging, continued after a second warning made by the administrative authorities, is punishable by deprivation of liberty for a term of up to two years or correctional labor for a term of from six months to one year¹.*

In the eyes of the Western reader, it is surprising not only the type of crime described but also the severity of the penalties provided for. But what exactly is meant by parasitic life and how Soviet criminal law identified such subjects for punitive purposes²?

¹ V. Pavlov, Selected writings, Anthology of Legal Science, Legal Center – Press, ISBN: 9785942016655, 2015, p. 15.

² The criminal law of the RSFSR was not a peculiarity of that Republic but exponential of a common character of Soviet criminal law. The adoption of a law "On the intensification of the struggle against people who avoid socially useful work and lead and antisocial parasitic lifestyle" dates back to 4 May 1961 and was introduced by a decree of the Presidium of the Supreme Soviet of the RSFSR, which was followed by similar decisions in other federated republics such as Belarus, Ukraine and Estonia.

Article 209 established criminal liability for three different forms of so-called parasitic existence in Russian called “*tunejadstvo*”, forming independent *corpus delicti*, - engaging in vagrancy, begging, leading a different parasitic lifestyle³.

It seems useful to briefly retrace the fundamental stages of the evolution of the criminal legislation in comment and try to frame it in the historical period in which it was introduced.

The adoption of a law "On the intensification of the struggle against people who avoid socially useful work and lead an antisocial parasitic lifestyle" dates back to 4 May 1961 and was introduced by a decree of the Presidium of the Supreme Soviet of the RSFSR. It was not a sudden decision, but the choice of introducing such a rule is based on the process of evolution of legislation which began in the years immediately following Stalin's death and ended - as far as the criminal sector is concerned - with the adoption in October 1960 of the New Codes of Criminal Law and of Criminal Procedure by the Supreme Soviet of the RSFSR. It can be said⁴ that it was an important evolution aimed at incorporating into the penal rules also those cases that harmed social justice.

These changes are based on the increased attention to "socialist legality" that has grown after the 20th Party Congress in 1956 which had introduced a principle of application of the rule of law characterized by due attention to the Marxist-socialist character of the country⁵.

The measure issued by the Supreme Soviet in 1961 is the result of a discussion that began in the first half of 1957 when the first draft laws of the various Soviet Republics "on the intensification of the fight against antisocial parasitic elements" were

³ V. Pavlov, Selected writings, Anthology of Legal Science, Legal Center – Press, ISBN: 9785942016655, 2015, p. 16.

⁴ R. Schlesinger - Soviet Studies, Vol. 12, No. 4 (Apr. 1961), Taylor & Francis Ltd, pp. 456-464.

⁵ R. Beermann, in The British Journal of Criminology, JULY 1962, Vol. 3, No. 1 (JULY 1962), ed. oxford university press, p. 72 ff.

published⁶, intended to affect all those who did not live on a working income and avoided carrying out work activities useful to society.

The proposed draft were the subject of wide debate⁷ because, on the one hand, the need to combat social parasitism was understood, on the other, there was a strong doubt -especially on the part of the legal schools and the Public Prosecutor's Office - about the effectiveness of the proposed rules and their compliance with the rule of law.

On the basis of the Decree of Presidium of the RSFSR Supreme Soviet of 20 September 1965 the expulsion was used exclusively in cases of persons who lived in the cities of Moscow and Leningrad - actual San Petersburg - as well as in their respective provinces. In this way, these decrees established the procedure for involving persons leading a parasitic lifestyle in socially useful work and determined fulfilment of administrative measures against them.

The rule in comment was added to the Soviet Criminal Code of 1966⁸ following the entry into force with a special amendment. The rule provided that initially the authorities had to proceed with a warning and only in case of failure the subjects were subjected to more stringent measures. In the latter case, expulsion to the specifically identified posts was envisaged for a period of 2 to 5 years with the obligation to carry out socially useful work and the confiscation of assets obtained with the proceeds deriving from unauthorized work. The decision was taken by the Local City Court called "*Gorodskoy Narodny Sud*" and did not provide for the possibility of appeal or revision⁹.

⁶ slackers were divided into two categories: (a) people who do not work, or if they work only by appearance, with permanent residence; and (b) persons who also live on a pension but without a known domicile. The first category would be considerate by the administrative authorities, while the second one would be considered by the ordinary courts (the people's courts). The sanction common to both categories was exile from two to five years.

⁷ R. Beermann, in *The British Journal of Criminology*, JULY 1962, Vol. 3, No. 1 (JULY 1962), ed. oxford university press, p. 73 ff.

⁸ R.S.F.S.R. 1960 UGOL.KOD. (Criminal Code).

⁹ V. Pavlov, *Selected writings, Anthology of Legal Science*, Legal Center – Press, ISBN: 9785942016655, 2015, p. 53.

Further improvement of the criminal legislation on liability for leading a parasitic lifestyle is associated with the adoption of 23 February 1970 of the Resolution of the Central Committee of the Communist Party and the Council of Ministers of the USSR n. 136 “On measures to strengthen the fight against persons who evade socially useful work and lead an antisocial parasitic lifestyle”. The resolution provided for a number of specific measures which were envisaged aimed at intensifying the fight against parasitism and it was also recommended that the Union republics made the necessary changes to the criminal legislation¹⁰.

On 7 August 1975, the Presidium of the RSFSR Supreme Soviet issued a Decree “On the introduction of amendments to Article 209 of the RSFSR Criminal Code”¹¹. At the same time, the Presidium of the RSFSR Supreme Soviet adopted a resolution “On the procedures for applying Article 209 of the RSFSR Criminal Code” (CCE 37)¹².

These rules introduced instructions for the application of warnings to “parasites” as an initial measure of suppression of such behavior. If then, after the warning, the parasites did not get a job for one month, then the police gave them an official warning and thus we can say that a parasitic lifestyle could last up to six months.

On 30 May 1977, the Presidium of the RSFSR Supreme Soviet halved another period on the norm in comment. Precisely, “On the procedures for applying Article 209 of the RSFSR Criminal Code” the following text will substitute:

“2. Persons leading a parasitic way of life (in the absence in their actions of evidence of vagrancy or begging) are summoned by the organs of internal affairs and officially warned that a parasitic existence cannot be tolerated. These persons are informed that, within a month, they must choose a place of work at their own discretion, and obtain employment, and that necessary assistance in obtaining work can be provided by the executive committee of the local Soviet of Workers Deputies.

¹⁰ *Ibidem*, p. 55.

¹¹ *Gazette of the RSFSR Supreme Soviet* 1975, No. 33, p. 698 ff.

¹² H.J. Berman, *Soviet Criminal Law and Procedure*, Harvard University Press, Cambridge, 1966.

“If a person continues to lead a parasitic way of life, one month after such an official warning, the organs of Internal Affairs will decide the question of bringing criminal charges against him in accordance with Article 209 of the RSFSR Criminal Code.”¹³

It can be said that the maintenance of parasitic lifestyle is an independent crime, whose composition differs from the composition of vagrancy and begging, provided by the same article 209 of the RSFSR Crime Code.

Always useful to specify that in accordance with the law, “malicious evasion” was considered the behavior of the person who failure to appear at the enterprise where he was sent by decision of the executive committee absence from work after entering this enterprise. As well as those cases where the directed person started to work only for appearances, but his/her subsequent behavior testified to a stubborn unwillingness to work. For example, the behavior of systematic and prolonged absences from work or the abandonment of the workplace without a reason, permission or justification.

The *ratio legis* for the introduction of the rule in question was to prevent and combat crimes against subjects who did not want to carry out work activities and, consequently, led a parasitic lifestyle.

The anti-parasite law represents an important means, also due to the vagueness of the definitions contained in it, to punish even those crimes related to the use of common goods or those illegal activities for which there is not sufficient evidence to open criminal proceedings¹⁴.

One of the most relevant aspects of the law, according to authoritative opinion¹⁵, is the fact that the power to order exile is not exercised through a judgment but through administrative orders or decisions of assemblies of factories, offices, institutions or collective farms. A sort of administrative deportation that originates from pre-revolutionary legislation and that, with different relevance and different uses, has

¹³ *Ibidem*.

¹⁴ R. Beermann, in *The British Journal of Criminology*, JULY 1962, Vol. 3, No. 1, ed. oxford university press, p. 78 ff.

¹⁵ *Ibidem*.

remained in force as a solution to punish those who did not have sufficient evidence of guilt against them or as a means of removing unwanted citizens from cities and villages.

It is recalled that in the Constitution of the period in Article 60 it was provided that any form of subtraction from socially useful activities and work cannot exist and is not adherent to the principles of Soviet social life¹⁶. The basic idea was that subjects who did not want to carry out any work activity and led a parasitic life also represented serious economic and moral damage to the Soviet state.

The high social danger of the *"tuneystvo"* was considered not only on the basis of the lack of adherence to the principles of socialism but also because it represented a prerequisite for the commission of other crimes. Persons who did not carry out any work activity, not having the means of subsistence, not infrequently were led to commit crimes against property, crimes against people and other dangerous criminal activities. In fact, even in other Western legal systems, the same reasons were to justify the existence of norms such as, for example, the crime of begging ex article 670 of the Italian criminal law system¹⁷.

According to the reconstruction of legal doctrine¹⁸ the subsequent improvement of the legislation consisted in further simplifying the procedure for binding parasitic elements to criminal liability for evading socially useful works and in stepping up the fight against this antisocial phenomenon.

With the decree of the Presidium of the RSFSR Supreme Soviet of 11 October 1982, amendments were made to the rule which made it possible to specify the legal aspects

¹⁶ V. Pavlov, Selected writings, Anthology of Legal Science, Legal Center – Press, ISBN: 9785942016655, 2015, p. 15.

¹⁷ Article 670 of the Italian Penal Code provided in the first paragraph for the arrest of up to three months *for "anyone who begs in a public place or open to the public"*. The penalty of arrest ranged from one to six months if the act of the crime was *"committed in a repugnant or vexatious manner, that is, by simulating deformities or diseases or using fraudulent means"*.

¹⁸ See V. Pavlov, Selected writings, Anthology of Legal Science, Legal Center – Press, ISBN: 9785942016655, 2015, p. 59.

of criminal liability arising from parasitism¹⁹. This norm clarified the legal grounds for liability for parasitism, the disposition was somewhat changed and the sanctions was strengthened.

The fight against “parasitism” was conducted until the adoption in 1991 of the law "On Employment of the Population", which abolished criminal liability for parasitism and recognized the *status* of unemployment, although the criminal article had existed for 30 years²⁰.

2.1 Preliminary requirements and constituent elements of crime

An obligatory prerequisite for bringing to criminal liability under the article 209 of the RSFSR Criminal Code was an official warning to such a person about the inadmissibility of such a parasitic lifestyle²¹. The warning was presented by the internal affairs authority by signing the formal warning deed. The police warned the subject of branding to criminal liability in case of non-cessation of the parasitic lifestyle. At the same time was explained the need to find a job within one month and the possibility of obtaining assistance in this regard from the executive committee of the local Soviet²².

In fact, the executive committee of the local Soviet were obligated to provide labor and domestic accommodation for persons who evade socially useful labor, taking in account their specialty, qualifications, education. Aid had to be provided within a period not later than 15 days from the date of applying for assistance in finding employment. This meant that the only form of unemployment during the Soviet

¹⁹ The decree of the Presidium of the RSFSR Supreme Soviet of 11 October 1982 “Relating to the amendments and additions to the RSFSR Criminal Code” on *Gazette of the RSFSR Supreme Soviet*, 1982, n. 41, p. 1513 ff.

²⁰ Law of the Russian Federation of April 19, 1991, No. 1032-1 "On Employment of the Population in the Russian Federation".

²¹ V. Pavlov, Selected writings, Anthology of Legal Science, Legal Center – Press, ISBN: 9785942016655, 2015, p. 19 ff.

²² The decree of the Presidium of the RSFSR Supreme Soviet “Relating to the amendments and additions to the RSFSR Criminal Code” on *Gazette of the RSFSR Supreme Soviet*, 1984, n. 51, p. 1793 ff.

period described was voluntary and non-structural relating to the economic and labor system.

If the person did not get a job after a period of one months and following the official warning was made and continued to evade socially useful labor, live on unearned income and stay in a state of constant alcoholism, then the police could decide to attribute a criminal liability for leading a parasitic lifestyle²³. On the basis of the normative provisions of Soviet criminal law we can say that it is a criminal case with progressive formation.

As for the constituent elements of the criminal case of the vagrancy in order to bring to criminal liability under the article 209 of the RSFSR Criminal Code for the crime in question, it was necessary: 1) establishment of long-term evasion from work, 2) living on unearned income and 3) leading a guilty anti soviet social lifestyle²⁴. It immediately appeared that the constituent elements of the crime for their generic definition would have created application difficulties for excessive genericity of the regulatory provision.

For this reason, the application in practice of the criminal law on liability for maintaining a different parasitic lifestyle caused difficulties for law enforcement of Soviet state in a different number of cases.

Finally, for the correct individuation of the crime, the subjective element of the criminal case that had to consist in the specific and direct intent was fundamental. We can say that those who carry out a parasitic life were aware that their behavior and way of life were intentional. Motives and goals of those who perform socially useful work often consisted in the goal of not working at all or of leading life using others, precisely parasitic life²⁵.

²³ *Ibidem*.

²⁴ V. Pavlov, Selected writings, Anthology of Legal Science, Legal Center – Press, ISBN: 9785942016655, 2015, p. 20.

²⁵ *Ibidem*, p. 34-35.

2.2 The concept of the parasitic lifestyle in the Soviet Criminal law

The concept of parasitic lifestyle that has been going on for a long time includes those cases when a person evades socially useful work and lives on unearned income for more than four consecutive months or for a total of the year. For this reason, individuals received an official warning about the inadmissibility of such lifestyle²⁶.

To explain what the parasitic way of life means in Soviet society it is necessary to consider the definition of socially useful works. The socially useful work was considered only by work in a state-sanctioned form. Self-employed and other type of work were allowed only in their spare time from "socially useful work" otherwise it was equated to parasitism. For example, studying at a public school was considered a sufficient equivalent of socially useful work.

The concept of parasitic life has been better identified by the decree of the Presidium of the RSFSR Supreme Soviet "On the procedure for applying article 209 of the RSFSR Criminal Code" of 13 December 1984 in accordance with which the conduct of parasitic lifestyle should be understood as *"a long term, more than 4 months in a row or more than 4 month in a total during the year, the adult able to work and person on unearned income with evasion from socially useful work"*²⁷.

It should be remembered that the Soviet criminal law system has its own peculiarities. In this sense two types of considerations seem important: first, it is necessary to recall the purpose of the entire Soviet penal system linked to the ideological conception of the socialist state and to the archetype of man who lives in that state; secondly, the fact that Soviet criminal law is state-based law.

On the first aspect, it should be noted that soviet criminal law generally seeks to create an ideal man of Soviet society that by its own conduct and can achieve all the goals that the state has set. In this context the ideological background is very significant

²⁶ H.J. Berman, *Soviet Criminal Law and Procedure*, Harvard University Press, Cambridge, 1966.

²⁷ The decree of the Presidium of the RSFSR Supreme Soviet "On the procedure for applying the Article 209 of the RSFSR Criminal Code" of 13 December 1984 on *Gazette of the RSFSR Supreme Soviet*, 1984, n. 51, p. 1793 ff.

and, therefore, in socialism could not find space for a life without dedication to work that could lead to the evolution of society as it has been well evidenced in doctrine²⁸.

As evidenced above, Soviet criminal law is essentially part of state law. This means that the regulatory provision is of fundamental importance compared to the jurisprudential practice²⁹. In the context examined, in fact, there is no rule that induce the courts to follow the jurisprudential precedents. Although in the case of parasitism there is a diversified practical application due to the excessive generic nature of the description of the crime in the Soviet criminal code. The practical application of the standard has not always complied with the regulatory provision in a rigid way, as it will be highlighted in the following paragraphs.

2.3 Application issues and some practical cases.

The most interesting aspects of Article 209 of the RSFSR Criminal Code are evidenced by application practice.

One of the first questions confronted that legal practitioners in order to establish whether it was possible to bring “parasites” to criminal liability concerns the definition of the initial moment of evasion from socially useful work. It is important to remember that the socially useful work was considered only by state recognized work.

The definition of the initial moment of evasion depended on the application of the norm: for this reason, different theories of thought in doctrine were formed³⁰. Someone³¹ believes that the initial moment should be carried out from the moment

²⁸ Chris Osakwe, *Contemporary Soviet Criminal Law: An Analysis of the General Principles and Major Institutions of Post-1958 Soviet Criminal Law*, 6 GA. J. INT'L & COMP. L. 437 (1976). Available at: <https://digitalcommons.law.uga.edu/gjicl/vol6/iss2/5>, last consultation 3.04.2023.

²⁹ *Ibidem* p. 438.

³⁰ V. Pavlov, Issue of criminal liability for maintaining a parasitic lifestyle, *Pravovedenije*, 1985, n. 5, p. 23-28 (in Russian).

³¹ In this sense E. A. Chudakov, on The effectiveness of the application of norms by administrative prejudice, Moscow, 1981, p. 28 ff (in Russian).

of the factual evasion from work, others³² considers from the date of dismissal from job or expulsion from an educational institution.

The second reconstruction was more followed in practice for these reasons: it allowed avoiding mistakes and inaccuracies that might arise when deciding whether to bring a person to criminal liability for leading a parasitic lifestyle during the period of inquiry and preliminary investigation³³. On the other hand, the first reconstruction cannot allow to identify with certainty the initial moment of the commission of the crime since in practice it was very rarely possible to objectively document that “factual” moment.

The second application problem concerns the understanding and investigation of the use of means of subsistence of the individual suspected of the crime of “*tuneyadstvo*” that derive from non-work activities. It should be borne in mind that the application problems arise from the fact that the content of the concept of unearned income in the soviet legislation was not given. Also, in this case the role of doctrine was decisive, and the different positions were formed.

For some³⁴, the concept of unearned work was given by the gain obtained as a result of criminal actions or, more generally, not recognized as legal, due to activities not their own but those of others and deriving from other sources. Other scholars³⁵ considered unearned work that deriving from the growth of the patrimony in a passive way, which does not derive from the factual work activity and, therefore, not allowed by the soviet norms.

It seems that the most accredited position was the one that identified in unearned work the gain obtained thanks to illicit activities and without the use of one's own

³² The position is summarized by U. I. Liyapunov, on Liability for parasitism, Moscow, 1982, p. 23 ff (in Russian).

³³ V. Pavlov. Selected writings, Anthology of Legal Science, Legal Center – Press, ISBN: 9785942016655, 2015, p. 21.

³⁴ This is the position of U. K. Tolstoy as it is highlighted in the writing of V. Pavlov, Selected writings, Anthology of Legal Science cit. p. 23 ff.

³⁵ In this sense G. K. Kostov, on Socio-legal means of combating unearned income, Soviet state and law, 1985, n. 4, p. 16 ff.

work force or thanks to the attribution of the result of another person's work in various possible forms³⁶.

Another application aspect to be considered concerns the use of the punitive sanction provided for. According to the penal regulatory system³⁷, the person who was convicted of the crime of parasitism to imprisonment from one to two years was able to apply an alternative condemnation which consisted in obligatory work for the corresponding period. The alternative condemnation did not apply if the person in question had already benefited from the same treatment in the previous three years. If during the period of carrying out the alternative condemnation of socially useful work the person did not comply with the obligations laid down and did not have a disciplined behavior, the court could revoke the measure and, therefore, restore custody in prison.

From these brief considerations we understand the complexity of the practical application of the criminal norm. Reason why under the article 209 of the RSFSR Criminal Code relating to vagrancy, parasitism and wandering many very different cases have been tried and convicted for such a crime.

It is interesting to note that from the jurisprudential practice and the guidelines given by the plenary session of the Supreme Court of the USSR³⁸ it emerged that the individual courts should had to find out the profile of the person brought to justice under the article 209 of the RSFSR Criminal Code³⁹. In particular, the elements to be considered were ability to work, age, marital status, criminal record, sources of livelihood, reasons for leading a parasitic lifestyle and other circumstances that are important for the correct solution of the question of guilt, qualification of the crime and measure of punishment.

³⁶ This is the position of the scholar V. P. Gribanov, as reported by V. Pavlov, *Selected writings, Anthology of Legal Science* cit. p. 23 ff.

³⁷ Article 34 of Soviet Criminal Code.

³⁸ Decree of the Plenum of the Supreme Court of the USSR of 28th June 1973 available in *Collection of resolutions of the Plenum of the Supreme Court of the USSR 1924-1977*, part 2, Moscow, 1981, p. 286 ff.

³⁹ V. Pavlov, *Selected writings, Anthology of Legal Science*, Legal Center – Press, ISBN: 9785942016655, 2015, p. 33-34.

The cases that the Soviet Courts took into consideration were different and often, for reasons of excessive genericity of the regulatory provision, gave rise to different applications. One question arises: who were the people convicted of the crime of systematic vagrancy and parasitism? To answer this question, it is necessary to consider - on the one hand - judicial statistics of some courts that showed some trends. On the other, there are cases that have caused so much discussion in public opinion⁴⁰. As for the cases officially detected in different hypotheses these were persons who lived thanks to the help of their parents or spouse, cohabitant or relatives. In some cases, these were persons who rented an apartment and obtained an income that in the Soviet period was not equated with a recognized work. There were several cases of those persons who used the proceeds of other crimes such as theft and scams.

These statistics are not exhaustive but gives a better picture of the categories of persons who were convicted of the offences referred to in article 209 of the RSFSR Criminal Code. The study of judicial practice shows that the antisocial parasitic way of life, which -as a rule – persons led during the period of evading social useful work and living on unearned income, was often accompanied by the commission of other crimes and immoral behavior⁴¹. This type of correlation described led to the intensification of the repression of behaviors attributable to the parasitic life and wandering.

As has been said before since the mid-sixties the fight against crime in comment has intensified. It can be pointed out that by mid of 1964, more than 37.000 people had been taken into exile under the application of the article 206 of Soviet Criminal Code. It is curious to notice how “the parasites” were recognized and referred to the cases of the engineer-technologist, who stopped working, equipped a rabbit farm and began to live off the income it brought, the firefighter, who was engaged in his land plot and traded in the market vegetables and fruits⁴².

⁴⁰ *Ibidem*, p. 26.

⁴¹ V. Pavlov, *Selected writings, Anthology of Legal Science*, Legal Center – Press, ISBN: 9785942016655, 2015, p. 29.

⁴² *Ibidem*, p. 27.

Charges of parasitism were frequently applied to dissidents, who were often intellectuals and writers. An example is Joseph Brodsky, the Russian poet awarded the Nobel Prize in Literature. He was charged with social parasitism by the Soviet authorities in 1964 because the Court established that his series of odd jobs and role as a poet were not a sufficient contribution to society. It must be said that for the moral and ethical of citizens during the Soviet period full employment was considered as a right guaranteed by the State and as a form of personal and social realization.

Since the 80s the fight against the parasitic lifestyle intensified. Many preventive actions were put in place up to organized raids by the police on shops and cinemas during working hours. All citizens of working age caught there were checked and reported to the place of work about truancy⁴³.

Subsequently with the decree of the Presidium of the Supreme Soviet of the USSR and the Presidium of the Supreme Soviet of the RSFSR of 16 May 1985 strict liability measures were established for drunkenness and connivance with it, which was essential for the fight against parasitism.

2.4 Special categories provided by Soviet criminal law that excluded punitive claims.

As briefly illustrated in the previous paragraph, the application cases of the article in comment were many and different from each other. It should be pointed out that there were tools to mitigate the effective application of the criminal legal situation in comment and so categories were identified which, although they represented all the constituent elements of the criminal case, were not punished by the Soviet state.

It has already been evidenced that to be prosecuted for leading a parasitic lifestyle under the article 209 of the RSFSR Criminal Code a set of conditions must include antisocial behavior. In Soviet legislation, a clear circle of persons belonging to the category of the legally disabled population was established on legal level. At the

⁴³ R. Gregory. Paul, Stuart, C. Robert, *Comparing Economic Systems in the Twenty-First Century*, South-Western College Pub., 2003, p. 118 ff.

same time it was considered categories of persons who, for other reasons, were not subject to the general obligation to work.

This is the case of minor citizens, invalids of various categories, women over the age of 55, men over the age of 60, pensioners, pregnant women and women with minor children under 12 years of age and likewise subjects (men or women) who took care of domestic life⁴⁴.

A separate consideration deserves the analysis of domestic care activities in relation to the article 209 of the Soviet Criminal Code. More generally, it should be noted that in the society of the Soviet period the activity of domestic care was recognized as an important role. It was not always possible to reconcile working life with the commitments of care and management of the family. Soviet society reserved particular attention for the education of children in the family. For these reasons, mothers were granted a period of maternity leave and sums as state maternity allowance. In larger families and in the presence of invalids, the Soviet state considered domestic work as a real socially useful work job.

Those conditions of equivalence removed the categories of persons described from the application of the criminal rule of the article 209 of the RSFSR Criminal Code⁴⁵. It should be emphasized that the preferential treatment did not concern only women, but also men in cases where the profession of the woman made it possible to obtain greater sustenance for the family and it was more useful for the wife to work and not for the husband who, in turn, provided for domestic activities and childcare.

There were also other situations that had a legal treatment that excluding the application of criminal liability for vagrancy. In Soviet society it was allowed to carry out work on one's own only in very limited cases and under certain conditions. It was possible in the context of cultivation activities in order to sustain one's close family circle, in the field of handicrafts, consumer services for the population as well

⁴⁴ V. Pavlov, *Selected writings, Anthology of Legal Science*, Legal Center – Press, ISBN: 9785942016655, 2015, p. 31.

⁴⁵ *Ibidem*, p. 32 ff.

as other types of activities permitted by law, based only on the personal labor of soviet citizens and members of their families, even officials of religious cults⁴⁶.

3. The right to work in the Soviet Constitution

To clarify the reasons why the analyzed norm provided for in Article 209 of the RSFSR Criminal code were introduced during the Soviet period it is useful to evidence how the right to work was considered in that historical period.

The Union of Soviet Socialist Republics (USSR) Constitution of 1936 foresaw as follows: *"labour in the USSR is a duty and a matter of honor for every able citizen"*. Under this principle of the Constitution on 1961 the Presidency of the Supreme Council of the RSFSR adopted a decree "On strengthening the fight against persons (slackers, parasites, vagrancy), evading socially useful work and leading an antisocial parasitic lifestyle".

The right to work in the USSR was enshrined in Article 118 of the Soviet Constitution of 1936, and after in article 40 of the USSR Constitution of 1977.

The "Citizens of the USSR have the right to work, that is, are guaranteed the right to employment and payment for their work in accordance with its quantity and quality.

*The right to work is ensured by the socialist organization of the national economy, the steady growth of the productive forces of Soviet society, the elimination of the possibility of economic crises, and the abolition of unemployment"*⁴⁷.

Every citizen of the USSR was guaranteed employment like *"the right to receive a guaranteed job with pay in accordance with its quantity and quality and not lower than the state minimum size, including the right to choose a profession, occupation and work in accordance with vocation, ability, training, education and social needs."*

⁴⁶ These are considerations made on the basis of the normative provisions of Article 17 of the Soviet Constitution.

⁴⁷ The Article 118 of the USSR Constitution of 1936.

This last aspect was emphasized in the Soviet Constitution of 1977: “(1) *Citizens of the USSR have the right to work (that is, to guaranteed employment and pay in accordance with the quantity and quality of their work, and not below the state-established minimum), including the right to choose their trade or profession, type of job and work in accordance with their inclinations, abilities, training and education, with due account of the needs of society.*

*(2) This right is ensured by the socialist economic system, steady growth of the productive forces, free vocational and professional training, improvement of skills, training in new trades or professions, and development of the systems of vocational guidance and job placement*⁴⁸.”

By official work was meant to be employed for a company or institution with a mandatory mark in the so - called “*workbook*” in Russian “*trudovaya knijka*”. The pinnacle of following the social ideal of the Soviet work ethic was considered two entries in the workbook: first, about employment after graduation and, the last, about dismissal from it in connection with retirement. It was a belief strongly rooted in the mentality of people in that historical period.

4. Conclusions

Legal rules of different legal orders have a logic only if they are analyzed in the historical, cultural and social context in which they were introduced. In the case of the crime of vagrancy and parasitism provided for in the Criminal Code of the Soviet period, the reason was the ideological principle and, at the same time, the factual reality of a planned economy, without structural unemployment and in which the labour-power was in turn a variable subject to planning according to which every citizen was supposed to find full realization in the work and the state guaranteed full employment. The need to ensure the possibility of working for every Soviet citizen for whom work was understood as a form of collective realization and, at the same time, the excessive rigidity of the interpretation of constitutional norms made these institutions excessively strict.

The anti-parasite law is certainly not an expression of the Latin brocade *nullum crimen, nulla poena sine lege* as it contains precisely such vague and poorly made definitions of

⁴⁸ The Article 40 of the USSR Constitution of 1977.

the different types of offenses such as to introduce into judicial practice the concept of "dangerousness" of certain individuals because what is punished is not a particular crime committed but a lifestyle in a preventive way to avoid dangers in the future.

Nowadays, according to Article 37 of the current Constitution of the Russian Federation and the Labor Code, forced labour in Russia is prohibited. The phrase about guaranteed employment for all citizens, present in Article 40 of the USSR Constitution of 1977, is absent.

The comparative study conducted showed how the various configurations of the binomial citizenship-work is central to the different legal systems and in different historical periods. The ways in which this relationship is regulated differentiate the relationship of the State with the organization of the labor system and welfare policies. These principles find their maximum expression in the norms of Constitutional rank because of the primary importance that the work pours into the organization of a given country. These considerations, as it emerges from the writing, apply both to Western legal systems and to those of socialist derivation.

Another fundamental issue is the relationship between the constitutional level and the legislative and regulatory level, entrusted with the task to apply and implement the Constitution, but sometimes practically hampering the accomplishment of the emancipatory aspirations of the fundamental charter, due to excesses and mistakes of the political officers, or due to changes in the societal relations of production and in the ideology of the ruling elite. This is precisely the case of labour, in Europe, protected, exalted and put in the center of several post-World War II constitutions, willing to mark a turning point also in this regard after the fall of fascisms; but, nowadays, the constitutional emancipatory role of work is openly threatened by legal provisions more and more inspired to the neoliberal market ideology. Contrary to what is solemnly stated in the Declaration of Philadelphia⁴⁹, inspiring the constitutions of the immediately following years, work is, in fact, currently envisaged by many lawmakers as a commodity much more than as a right, recalling the pre-

⁴⁹ Declaration concerning the aims and purposes of the International Labour Organisation, 10 May 1944, art. I.

constitutional legal paradigm⁵⁰. From this arises the legislative tendency of the last years to try to alleviate some of the more tragic and apparent consequences of the work conceived as a dependent variable in the market without questioning the dominant market ideology.

In conclusion, it is undeniable that the presence and the evolution of ideology in the legislation of certain states in particular historical periods has paramount importance and influence also in the legal field and it is clear that any rule, even sanctioned by a written constitution, can be misused, betrayed or, on the contrary, too zealously applied, in all this cases with the risk of serious consequences on people's lives.

⁵⁰ See L. Gallino, *Il lavoro non è una merce. Contro la flessibilità*, 2nd ed., Laterza, ISBN: 978-88-420-8875-2, 2010; see also Z. Bauman, *The individualized society*, Polity, ISBN: 978-0-7456-2506-5, 2001, pp. 17 ff.

