

Prison Labour: Historical, Normative and Practical Aspects*

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The paper analyses the historical, normative and practical aspects of prison labour. The first part is devoted to the historical development of penal systems and the purpose of punishment. There have been different conceptual approaches in different periods, starting from repressive and retributive elements and the function of punishment to the acceptance of the philosophy of resocialization and rehabilitation of convicts, the goal of which is to equip the individual for socially useful action and generally accepted behaviour. Namely, it has been observed that healthy and productive labour has an educational value, and changes the convicts' behaviour and living habits. Purposeful work contributes to the general well-being of prisoners, and also affects their awareness of the importance of accepting social norms. Therefore, the central part of the paper deals with the issue of legal regulation of prison labour, particularly analysing the relationship between prison and forced labour. In addition, the paper gives practical examples in order to shed light on the position of prisoners. At the same time, we strive to investigate to what extent prisoners were actively employed before imprisonment, and whether acquiring practical training during their sentence helped them to be better resocialized.

KEYWORDS: prison labour / rehabilitation / forced labour / resocialization

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Introductory Remarks About Prison Labour

Productive labour is an important ingredient of prison life, because it ensures an active day, generates financial resources and reduces the harmful consequences of freedom restrictions. The purpose of the prison sentence is not to punish the perpetrator of the criminal offence, but rather encourage changes in behaviour that are acceptable and standard from the point of view of the wider social community. The reason for implementing special programmes that include labour in prisons is to eradicate socially deviant behaviours. The adopted rehabilitation approach presents labour as means or form of penological treatment. In light of that, work is a part of the therapy aimed at strengthening the convicts' awareness of good and evil (Jovanović & Petrović, 2017). Apart from that, work is a key element in building a quality value and moral apparatus that shapes and corrects individual behaviour.

Work has a positive effect on prisoners' mental and physical health. Active work is recognised as one of the most important factors that prevents the repetition of criminal acts, because it creates a sense of self-worth in convicts. Boredom may give rise to conflicts between prisoners, while work in any form reduces tensions and contributes to smooth running of the institution. Positive dimension of working is also reflected in the plan of organisation of other activities within the prison institution. Work is a vital element of a successful life, because it provides financial independence and social status, develops a sense of self-worth and satisfaction, and leads to effective inclusion in the wider community. Prison labour may be regarded as a way to diminish potentially dangerous behaviours and opportunity to acquire skills, revitalize work potential and restore affinity towards work (Stuart, 2011). The main purpose of prison labour is to prepare prisoners for inclusion in the labour market after prison, since occasional or frequent stays in prison would otherwise lead to the separation of prisoners from the outside world and regular earning methods, which would drastically increase the number of return offenders. Rehabilitation or resocialization have developed on the basis of criticism of retribution, which is why its primary goal is to change the offender, i.e., enable him to lead a socially useful life. This is especially due to the fact that criminal offences are consequences of the individual's non-adjustment to normal living within the community. Work is the main instance of socialization, as it offers a context for a sense of belonging to develop (Dragojlović et al. 2013).

Prison labour as obligation was implemented for a long time in most countries, with some differences, so that certain categories of prisoners were excluded from the obligation, such as persons sentenced to shorter prison sentences (Austria, Luxembourg, Norway, Lebanon, Syria, Burma, India), political prisoners (France, Belgium, Cuba), although there are also examples of countries (Yugoslavia), where, depending on the severity of the crime committed, the prisoners were

subjected to hard physical labour or work that corresponded to the jobs they had previously. It is interesting to note that the labour obligation was constituted in the law or the prison rulebook, however in many countries, courts had the authority to make labour an optional or mandatory element of the sentence in a conviction (United Nations Department of Economic and Social Affairs, 1995). The objective of the paper is to show how much work affects the behaviour of prisoners and whether it helps them develop positive attitudes. We have started from the assumption that work has a corrective function aimed precisely at shaping human behaviour. In this regard, the problem of insufficient capacity of penitentiary institutions for work engagement of prisoners was recognised, which is why we directed the subject of the research towards a qualitative assessment of the treatment of prison labour. Likewise, in this research we wanted to point to the legal regulations in this area, in order to evaluate the purposefulness of the existing solutions.

Development of Prison Labour

Historically speaking, prison labour was a punishment or a supplement to punishment. Up until the end of the 18th century, the function of prison labour was repressive and directed towards physical exploitation. If we look back to the oldest period where the focus was on isolation and punishment, hard prison labour was a way to utilize cheap labour force. Essentially, the above mentioned period was marked by ensuring that the prisoner knew that the commission of criminal acts entailed social condemnation, isolation and punishment (Lakobrija, 2021). Prison sentence was mostly used as a form of retribution for a crime committed by an individual, and consequently, labour was regarded as a form of punishment. Therefore, since working was considered punishment for a crime, exhausting labour in difficult conditions was used as retribution for a criminal act. Therefore, imprisonment had an economic function, which led to the transformation of medieval castles and monasteries into labour institutions (Uzelac et al., 2008).

During the reign of Louis XVI, the Bastille prison received prisoners from higher aristocratic circles. The famous fall of the Bastille is celebrated today in France as a national holiday in memory of the great victory when the rule of law and freedom prevailed. Namely, the attack on the Bastille was the beginning of the French Revolution, which marked the fight against autocratic government and imprisonment (Turković, 2014). The English medieval penal system had penal institutions where layabouts and beggars who were able and willing to work were incarcerated (Lakobrija, 2021). Good examples were the labour homes in numerous European countries (e.g., The Netherlands, Germany) where vagrants could work instead of wasting time and thus degrading themselves and others

around them.² An idle life encouraged criminal activities, which is why the English Great Law of 1682 aimed to eliminate crime by implementing labour efficiency measures (Stevanović, 2012).

Apart from preventing unemployment, labour needed to be imposed on prisoners so they could support themselves, and not cause additional harm to society in addition to the crime they committed. For example, exhausting activities such as penal treadmills were abolished in England when the Prison Act was adopted in 1898, which, in addition to the arrangement and organisation of prisons, had senseless forced labour as its objective. The strengthening of private capital led to a modern form of slavery where private entities were the ultimate beneficiaries, and the practice of assigning prisoners to work in mines became common (Reynolds 1994).

In this regard, the prison labour was a continuation of medieval slavery, because prisoners were rented outside the institutions for the execution of criminal sanctions for tasks previously done by slaves. In other words, prisoners were regarded as slaves of the state. Nevertheless, absolute freedom in European countries was not disrupted, since the institution of *habeas corpus* offered numerous guarantees to persons who were suspected of having committed a criminal offence.³ Therefore, if someone was in captivity, he had to be handed over to the court within a reasonable time, which provided protection to individuals from arbitrary and inhuman treatment and unjustified arrest (Lakobrija, 2021).

As indicated, first penitentiary institutions were accompanied by the idea of the purpose of punishment based on the society's repressive response, i.e., punishment and intimidation of prisoners. Offenders were subjected to corporal punishment, so people sentenced to life imprisonment were branded in public squares by a hot iron. As Tanjević (2019) described it, "people were sent to prisons in order to isolate them from the rest of society and physically punish them in the cruellest way in order to break their will, spirit and personality."

During the colonial rule, Europe used African prisoners as a reserve labour force for important infrastructure projects. In this sense, the recruitment of prisoners was done to solve the problem of the lack of active labour force. Therefore, prison labour was used as means of exploitation in the interest of the state economy. In this context, some authors believed that the work of convicts was commodified by the authorities, because convicts were carriers of labour

² Precursors to prisons were labour correctional camps, among which the *Bridewell* in London was the most famous (Ignjatović, 2018).

³ As a curiosity, it should be noted that the term *habeas corpus* adopted by law, originated in music, from a Russian critic who described Beethoven's Fifth Symphony as an "anti-musical monster destroying the musical *habeas corpus*" that is, destabilizing the physiological composition of its listener.

force, but not owners of its usable value (Archibong & Obikili, 2023). Also, in the period before the decolonization of the African continent, prison labour was a mandatory aspect of imprisonment of convicted individuals living in colonial areas, as part of colonial policy, and prisoners were not paid for their work.

Likewise, due to the naval war in the Mediterranean between Islamic and Christian forces in the 15th century, the required rowing power was mainly coming from prisoners. This punishment was introduced in order to maintain the galleon fleet, but not with the aim of responding to the criminal justice system needs, but primarily for war purposes. Moreover, if rendered useless as rowers, galley slaves served as labour force for shipbuilding and harbour maintenance (Hillebrand, 2009).

Furthermore, if we continue to regard the past, we come across extremely negative experiences towards the prison labour. Humanity was shaken by forced labour in concentration camps as forms of war prisons where all capable prisoners were mandated to work under the slogan *Arbeit macht frei* ("Work sets you free") (Uzelac et al., 2008). Examples from China should also be mentioned, where during the 1950s, individuals who had formally served their sentences could not leave the camps and were forced to work in special brigades. Transfers from prisons to labour camps were frequent due to numerous problems such as systematic overcrowding in prisons, fiscal constraints, inadequate prison buildings, and lack of professional training of prisoners and guards.

The earliest evidence of prison labour in Germany dates back to the 4th century. In the Duchy of Württemberg in 1960, labour punishment replaced corporal and prison punishments, because corporal punishment was usually preceded by social ostracism (Hillebrand, 2009). In present-day Germany, the first correctional-penitentiary institution was founded in 1608 as a special institution where beggars and offenders were forced to work and live. The work was conducted within the institution and encompassed a wide range of activities, based on the assumption that prisoners benefited society through collective labour. Moreover, in the reform period that followed, the function of prison sentence as an effective means of resocialization was re-examined. Consequently, it was proposed that prison sentences be completely abolished in favour of individualized treatment and labour punishment (Hillebrand, 2009).

Prison labour has been used for centuries, but the purpose of legal labour has changed over time. Per repressive approach, the prisoner was punished twice: by formal deprivation of freedom and by forced labour in inhuman conditions. Apart from that, prison was an indicator of what happened when someone acted contrary to legal norms. The deterrent effect stood against the repressive element, because deterrence looked to the future, while punishment presupposed the presence of a retrospective moment. "There is free labour that elevates man, frees his brain from sinful thoughts and sick ideas – labour that forces man to feel like a particle of the

world life. But there is also forced labour, slave labour, which humiliates man – labour, done with disgust, for fear of punishment, and prison labour is the same" (Kropotkin, 2007).

As we have already pointed out, prison labour has conceptually evolved from a punishment or "price" to be paid for a committed crime to re-education and resocialization of an individual. The end of the 1990s was marked by the development of penal systems and the introduction of the reparation concept in order to establish restorative justice. The rehabilitative function of prison labour was affirmed in the period after the Second World War. The desire to "humanize prisons" is particularly highlighted in the famous French reform "Amor" from 1945. Reforms were evident in other countries as well (the Italian Constitution of 1948, the English Prison Act of 1952) where the first outlines of the humane dimension of prison labour could be found, designed to contribute to the social and professional integration of prisoners. Compulsory labour was abolished in France in 1987. According to the Public Service Act of 22 June, 1987, the prison was an organisation that served justice, and the prison administration had the mission to "participate in the execution of sentences and penal decisions on behalf of the French people and promote the social reintegration of people entrusted to it" (Dufaux, 2010). On the other hand, in the previous period, the legal acts that regulated the prison systems resorted to a different definition in line with the concept of punishment, so the prison was a place where both the punishment was executed and the rehabilitation of inmates accomplished through labour.

In the United States of America, prison labour was introduced in 1682. Prisoners were cheap labour force used by private companies that sold their goods in the open market.⁴ This system was abolished towards the end of the 19th century by the Congress, which limited the sale of goods made in prison, thereby limiting the prison labour to production of goods used by the state (Jovanović & Petrović, 2017). These programmes were implemented with the objective of generating revenue that would "cover" the costs of serving the sentence that the state was supposed to cover. The funds obtained should, in addition, enable the payment of restitution and provide financial support to crime victims. Moreover, in order to ensure a market for their products, an obligation was introduced as an integral part of the programme, for special industrial agencies to repurchase part of the goods produced in prison units. The improvement programme encouraged state prison systems to develop partnerships with private companies to create employment opportunities for prisoners after they serve their sentences. There are other ways work programmes benefit prisoners. They help create opportunities for them to develop job-specific skills and work habits. Contribution and participation in the professional environment emit positive outcomes for prisoners on the

⁴ Also, during the American Civil war (1865), hired prison labour force was commonly used.

emotional and mental level. Also, research shows that working in prison reduces the rate of recidivism (Solomon et al., 2004).

International Standardization of Prison Labour

International legal instruments recognise prison labour as an important aspect of a prisoner's personal well-being that contributes to improvement of mental and physical abilities. In terms of legal sources, two conventions of the International Labour Organisation should be noted: Convention no. 29 on forced or compulsory labour adopted in 1930 and Convention no. 105 on the abolition of forced labour dating from 1957. In addition, non-binding regional minimum standards have an important role, including the United Nations Standard Minimum Rules for the Treatment of Prisoners (known as the Nelson Mandela Rules) and the European Prison Rules. Regarding the number of ratifications, Convention no. 29 and Convention no. 105 are widely accepted, and are applied in a total of 181 and 178 countries, respectively. The Nelson Mandela Rules, adopted by the General Assembly of the United Nations, are valid in all 193 members of that intergovernmental organisation. On the other hand, the European Prison Rules cover only 46 Council of Europe member states. However, unlike the Standard Minimum Rules of the UN, whose effective implementation is not ensured by any court, but which are used as guidelines issued to states by organs and bodies within the UN system, the practical importance of the European Prison Rules is far greater, because the European Court of Human Rights regularly refers to them in its practice. That way, the soft law rules regarding the prisoners' working conditions become binding.

Work in institutions for individuals deprived of freedom has certain specific features compared to ordinary work done with the purpose of gaining profit. Namely, Convention no. 29 allows for compulsory prison labour if the jobs are directly provided by the state or a private entity (natural or legal entity) operating under the supervision and control of a public authority.⁵ The control must be efficient, systematic and regular, therefore the condition is not met if the supervision of public authorities is periodic. The body authorised to interpret ILO conventions has repeatedly emphasized that the need for public authorities' supervision over forced prison labour and the prohibition of placing prisoners at the disposal of a private company or association are cumulative conditions. The focus is on the elimination of forced prison labour for private entities, so in principle the employment of prisoners, unless voluntary, constitutes a violation of

⁵ As an argument in favour of adoption of that decision it has been pointed out that "private subjects are, above all, eager for profit and as such represent an increase risk for prisoners' well-being, unlike the state, which represents public interests" (Milman-Sivan, 2013).

the Convention.⁶ Economic interests should not have an influence on prison labour, which is why it is recommended that the work facilities in the prison be run and managed by someone appointed by the administration of the institution, provided that the work can also be organised outside the institution, with private individuals, for which the institution will charge a market rate. Convention no. 29 prohibits forced labour for gaining profit, but does not exclude voluntary prison labour for private profit. In this regard, prison labour for the benefit of private individuals must be done on a voluntary basis with the express consent of the prisoner (Kovačević, 2021).

Contrary to that, the Standard Minimum Rules for the Treatment of Prisoners, prepared by the Economic and Social Council of the United Nations in 1957, allow, in exceptional cases, prison labour for private persons, provided that the prison administration supervises the work of prisoners who will receive adequate remuneration for their work. A more flexible approach is seen in the European Prison Rules, which allow the employment of prisoners by private entities as long as the work is done in coordination with the prison administration (Kovačević, 2013).

Unlike the ILO Convention no. 29, which ended the long-standing legal practice of exploitative prison labour, other international and regional instruments that deal directly or indirectly with the prison labour provide a lower level of protection.⁷ At the same time, we should keep in mind that the ILO Convention no. 29 is one of the ten "basic" conventions resulting from the need to agree on the harmonization of rules regarding the minimum labour rights at the global level. What can be concluded from the Convention is a clear separation of prison labour in the private and the public sector and strict conditions for the qualification of voluntary work of inmates. It is important to mention that international law does not prescribe the work obligation for persons in custody. Even though the formulation used in the ILO Convention no. 29 prohibits prisoners awaiting trial from working, the Expert Committee for the Implementation of ILO Conventions and Recommendations notes that the provisions of ILO Convention no. 29 do not prevent persons in custody from voluntarily work (Kovačević, 2021).

Namely, in order for the prison labour to have educational and corrective value, it must meet several criteria from the relevant international and regional law sources. In light of this, it is indicated that the work must be "common", in the sense that such work can be regularly demanded from a person deprived of

⁶ Reporting expert from the Expert Committee declared that at the time of adoption of the ILO Convention no. 105, the draft of the convention that is widely supported expressly stipulated "that there should not be any forced labour for private interests of any kind, but for the purpose of private concessions" (Milman-Sivan, 2013).

⁷ An exception in that regard is only the American Human Rights Convention which prescribes that the voluntary work of prisoners must be supervised by a public authority and must not be used for private purposes.

freedom based on a legally pronounced court decision, while respecting all material and procedural rules. This means that prison labour is possible only when the general principles of law are respected, such as the right to a fair trial and defence, the presumption of innocence, equality before the law, etc. (Kovačević, 2013).

The European Prison Rules require that prison labour be regarded as a positive element of the prison regime. Work programmes should be meaningful and adapted to the market situation, which contradicts practical experiences demonstrating the opposite, meaning the prisoners are placed in conditions that do not contribute to their professional development, but quite the opposite, lead to their antisocial attitudes worsening. The shift towards a different (rehabilitative) function of prison labour is partly attributed to the General Declaration on Human Rights, which proclaims the right to work as a general principle that must not be denied to any man, not even one serving a prison sentence. The Standard Minimum Rules for the Treatment of Prisoners indicate that prison labour must not be repressive or degrading. Additionally, prison labour is provided by the prison administration, either independently or in cooperation with private companies, inside or outside the prison.

An important protective measure covered in international instruments is the length of time spent at work, which must be organised and distributed in a way that does not disrupt the performance of other activities. Turkish prison services allow prisoners to work overtime, which is regulated in detail so as to prevent misuse. Despite this, the International Labour Organisation estimates that at least 1/5 of prisoners encounter labour exploitation (Zanella, 2020). In this regard, the question is posed whether a more detailed and coherent set of standards could better protect prisoners from degrading work conditions.

Working Conditions in Penitentiary Institutions

Work can alleviate prison life hardships, since most of the day is spent outside the prison cell in an environment that contributes to the general well-being and develops the collective spirit. Apart from that, work establishes mental and physical balance, encourages the creative spirit and develops positive feelings. In this regard, work not only satisfies the development needs of an individual, but also establishes his inner balance and emotional stability. Taken together, a pleasant working atmosphere and communication with other people certainly strengthen self-confidence and boost the morale. The New Prison Rules of the Council of Europe state that "the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release" (Rule 26). The main goal of the work is to prepare prisoners for a normal life in the community. The International Covenant on Civil and Political Rights states that "the penitentiary

system shall comprise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation." (International Covenant on Civil and Political Rights, Article 10(3)).

Lack of stable employment increases the risk of committing criminal acts. Many studies show that the percentage of convicted individuals who were not actively employed in the period before sentencing for their crimes is significantly higher compared to the general population. A prison sentence in most cases confirms long-term exclusion from the labour market due to poverty or low education level. For example, research conducted in 2000 showed that in that year, 2/3 of convicts in England were not working in the period preceding imprisonment. The situation was similar in Germany, where the rate of inactivity was 73% (European Commission, 2014). Studious research that could be cited as an example even today, was done back in 1994 in Austria on a sample of 505 prisoners, where half of the respondents were convicted again within two years, while only 33% of them managed to find stable employment (Baader, 2007). At the same time, prisoners are considered a category more difficult to employ even within the prison itself, causing the "pathology of precarity", which is gaining momentum, especially if infectious diseases such as AIDS or hepatitis B are taken into account, which exclude regular work. Certain authors state that decreases in employability is characteristic of deprivation of freedom due to loss of self-esteem, initiative, contact with the outside world, but also other reasons, such as debts these persons may have, their housing problems, and employer's prejudices regarding employment (Baader, 2007). On the other hand, in addition to external factors, emphasis is also placed on the management of work within the prison institutions.

Taking the goal of rehabilitation into account, prison labour should not be organised differently than free labour, especially in relation to means of production, consent to work, working conditions (e.g., working hours, occupational safety, wages). Also, prices of prison products should be close to industry price levels, in order to prevent unfair competition and social dumping. Therefore, health and safety standards should be equivalent to those applied outside prison regimes. At the same time, the requirement of decent working conditions is established regardless of whether the work is performed for the account of a penal institution or private individuals. In the light of that, the maximum number of working hours of convicted individuals must be prescribed, taking into account the time needed for rest, education and leisure. In this regard, concern for the well-being of prisoners has been increasing since the 1980s, so certain measures have been introduced: decrease in working hours, introduction of weekly breaks and prohibition of night work in prisons.

Work can be done in prison workshops and other premises equipped for that purpose inside or outside the prison. In more modern prisons, there are physically separate production and industrial units fully equipped with material resources

(machines, tools, furniture, safety equipment, lighting, ventilation, etc.) with the goal of mimicking standard production. Therefore, the production processes and infrastructure are adapted to the classic organisation of work outside the prison. However, there are differences, which is why prison labour can be characterized as a "special work regime" that connects institutional and non-institutional aspects, since it contributes to the autonomy and professional development of convicts, reflecting the social dimension of rehabilitation and resocialization (Sitzia & Lopez, 2023). Prison labour may include various sectoral activities, such as the production of furniture and clothing, processing of constructions and materials on the production line, recycling, and crafts.⁸ There are various forms of professional training. Greater effect of productive work, in terms of increased work ethic, is seen in production and service activities. Due to their dynamic features, they require person's mental and physical strength to be maximized, which has a positive effect on one's character and will. Likewise, the work can refer to auxiliary tasks necessary for proper functioning of the prison institution (e.g., cooking, cleaning, laundry, work in the prison store that supplies prisoners with food and personal hygiene products, minor electrical maintenance tasks in the buildings). Also, prisoners with craft, cultural and artistic talents can perform professional activities for their own account.

At the same time, it should be emphasized that working in prisons has financial benefits for prisoners as well, because they have the opportunity to support their families, and in some countries, work can also lead to remission of punishment, which can be considered a privilege *par excellence*. For example, in Romania, the rule is that for every four working days, the sentence is reduced by one day. It should also be noted that according to the law of that country, prisoners have the right to choose whether to make payments to a public or private pension fund, thereby ensuring their financial stability in the long term.

The Constitution of the Republic of Serbia prohibits forced labour, which does not include prison labour, provided that the work is voluntary and is performed in exchange for monetary compensation. Reasonable wages help cover everyday prison expenses, build a special savings fund that can be used after the release, contribute to family finances and represent a source for fulfilling civic duties (payment of damages, fines or compensation to victims). This way economic self-sustainability during incarceration is ensured, especially for prisoners trying to meet their secondary needs (De Vito, C. & Lichtenstein, 2016). This is extremely important because prisoners are often financially deprived.

Per the solution accepted in Italian law, compensation for prison labour cannot be less than 2/3 of the salary provided for in the corresponding collective agreement (Zanella, 2020). However, taking into account deductions from wages,

⁸ Prison industry is mainly used for production of goods and services offered to end-users in the free market (Sitzia & Lopez, 2023).

it is estimated that this amount is lower in practice. At the same time, the compensation must be fairly determined depending on the quality and quantity of the work performed. An *ad hoc* commission determines the wages and also the existence and number of deductions (accommodation costs, compensation for victims, compensation for procedural costs), provided that after the deduction, prisoners must be able to keep 3/5 of the earned wage (Stevanović, 2012). In Turkey, prisoners are paid annual profit shares in addition to daily payments.

Prisons that record a high level of work engagement of prisoners better maintain internal discipline and order, therefore there is less violence among prisoners, as well self-harm tendencies. Statistics also show that the suicide rate drops drastically due to healthy habits and a sense of belonging that develop due to working. It should be mentioned that, as a rule, these are socially marginalized individuals without formal education and work experience, which is why working while serving a prison sentence can be of crucial importance for professional training and active participation in the labour market after the prison time has been served. Productivity is vitally important to paid labour, which is why acquiring competencies in prison increases the prospects for professional reintegration (De Vito & Lichtenstein, 2016). However, employment prospects and the type of work prisoners can perform after release are limited by the nature of the crime.

The consequence of deprivation of freedom is that the individual loses the rights he would otherwise have if he were not in prison, such as freedom of movement or freedom of information. When it comes to labour rights, it should be pointed out that Germany is one of the few European countries that allows unionization of prisoners. The most famous union established in 2014 *Gefangener Gewerkschaft-Bundesweite Organisation* (GG/BO) in Tegel prison, which is also the first union in the world, has according to the latest data, more than 700 members in more than 50 prisons across Germany (Hillebrand, 2009). Contrary to that, Swedish law prescribes that prisoners are entitled to form a prisoners' council whose main function is to negotiate with the prison administration about living conditions in prisons, furniture and equipment to be used in common rooms, the items available for sale in prison kiosks, etc. However, the prisoners' council is not equivalent to a workers' council, since prisoners are not formally considered workers, so the prisoners' council is not authorised to negotiate working conditions. It seems that this solution is not in accordance with the ILO Convention no. 87 on Freedom of Association and Protection of the Right to Organise, as well as with the ILO Convention no. 154 on Collective Bargaining, which do not pose restrictions in this regard, which has been confirmed in a series of court decisions and additionally emphasized by the Expert Committee, which points out that "the purpose of these conventions is to enable freedom of association for trade union purposes" (Nilsson, 2017). Prisoners also do not have the right to join unions in the United States of America. That was confirmed back in 1977 in the case of *Jones v. North Carolina Prisoners' Labour Union* when the

union alleged that the North Carolina Department of Adult Correction violated regulations when it adopted a rule prohibiting prisoners from joining a union, inviting other inmates to join, and holding union meetings and other group activities. Namely, the prison administration believed that the existence of a union would cause unwanted problems, because the prisoners would most likely use the union organisation to slow down work and cause delays in order to disrupt the work discipline. In this regard, there was a dilemma whether the prison administration could limit constitutional rights and to what extent the court could intervene in the operations of prison systems. The Supreme Court did not start from the fact that it was necessary to prove that the Union is "harmful to the relevant penological goals" or that it represented a "danger to safety and order", but, on the other hand, it indicated that prisons differ in many ways from a free society, and that the imposed restrictions were reasonable.

In principle, prisoners have the basic right to freely choose their vocation and employment, which does not oblige the prison institutions to create a workplace within the prison that meets the needs of a specific employee. In comparative doctrine, the right to work is sporadically mentioned within the corpus of human rights as a subjective right guaranteed as part of the right to respect human dignity (Cicero de Moraes, 2019). The German Federal Court indicates that the state should strive to provide penal institutions with the reasonably necessary resources for personnel and material needs in order to achieve the resocialization goal (Hillebrand, 2009). Therefore, one cannot speak of a subjective right to work, since the prisoners' demands in this domain are limited by the available workplaces and the possibilities at a specific prison institution.

When the prison capacities allow, the work should be voluntary and freely chosen, and adequate for professional skills development. Therefore, the prison administration should take into account the aspirations of the specific convict and his plans when assigning him to free work as much as possible and taking into account the objective possibilities and subjective needs of the prison community. Also, the voluntary work of prisoners includes the selection of the type of work, which can be limited in cases where there is a disproportion between personal interests and tendencies, on the one hand, and objective physical and intellectual abilities, on the other hand.⁹

However, in European countries, all prisoners who would express a desire to work would not be able to work due to the limited possibilities of penal institutions. Partnerships with private organisations are permitted in order to provide prisoners with opportunities for training and work, under the condition that the prisoners' individual interests are not inferior to the lucrative motives or

⁹ For example, in Finland and Japan, before the work obligation has been abolished, choice of work was the task of convicts, provided they were convicted of minor criminal offences (United Nations Department of Economic and Social Affairs, 1995).

needs of the private organisation. If the focus shifts from punishment to helping prisoners to refrain from committing criminal offences, rehabilitation trainings are introduced (McEvoy, 2008). In states that no longer allow corporal or capital punishment, prison is the most severe punishment. Work camps are an interesting example. They have gained popularity in some American countries as means of morally uplifting prisoners (Pozen, 2003). Its critics highlight the "exploitative nature of such work and suggest that great profit can be made from those who are unable to resist power" (Pozen, 2003).

From a comparative legal point of view, prison administration being unable to obtain sufficient work led to partial or complete penitentiary privatization (Pozen, 2003).¹⁰ In this regard, it is very important to ask to what extent the growing trend of prison privatization is aligned with the generally accepted international standards, bearing in mind the ILO Convention no. 29, which establishes the condition that the prison labour is not to be used by private persons who hire the prisoners. The International Labour Organisation identified different systems of prison labour for the account of private individuals - the leasing system, the system of special contracts and the system of general contracts, however in the United Nations Report from 1955 it was stated that these systems were in contradiction with the ILO Convention no. 29 (Kovačević, 2021). In French colonies in Africa and Asia, there had been documented cases of "renting out" prisoners to work for private companies under extremely difficult conditions (Archibong & Obikili, 2023).

The oldest example of the leasing system included more than six hundred prisoners in Tonkin (Vietnam) who were assigned to a private coal mining company in a mine active on the Thai island of Koh Bon, in 1895. Prisoners worked nine-to-thirteen-hour shifts, seven days a week, without enough food, which led to many deaths. In 1709, an agreement was reached in the town of Tile, where entrepreneur provided wool, soap and coal to the prison in exchange for processed wool, while the profit was shared (Turković, 2014).

The leasing system has historically flourished in the United States, especially in the South, where the state and private entities conclude a contract regulating their mutual relationship, authority in prison management and prison labour, and the working conditions of prisoners (Zanella, 2020). The main difference between the leasing system and the general contract system lies in the fact that in the latter system, the prison administration retains the administration authority, while food and work materials are provided by a private entity. In the special contracts system, the private entity does not pay compensation to the state for the use of the

¹⁰ In the report which the states submit to the International Labour Organisation, in 2009 Germany reported that 12% of the total prison population was hired by private companies the reason being lack of jobs in state prisons (McEvoy, 2008).

prison workforce, which is under the complete control of the private entity that manages their work and pays their wages (Kovačević, 2012).

It is interesting to note that the contracting system was temporarily abolished in Italian law. According to the current decision that encourages prison labour for the account of private individuals, the prison institution can transfer the obligation of employing prisoners to public or private companies (Zanella, 2020). The costs of organising prison labour are borne by a private entity, while the prison institution provides the work premises. In this regard, in order to compensate for the lack of jobs offered by the prison administration, the Italian Law no. 193 of June 22, 2000 has stipulated benefits for private companies that employ prisoners in the form of exemptions from the payment of contributions and tax reductions. Thus, for each prisoner employed for at least thirty days, the state provides a private entity with a monthly tax credit that exceeds 500 euros (Zanella, 2020).

According to the amendment of the Law on Prisons from 2009, there was a rule in France where prisoners were obliged to perform at least one of the activities offered by the prison administration (Dufaux, 2010). Activities were aimed at reintegrating prisoners and were consequently adapted to the age, personality features, skills and other personal characteristics of the prisoners. Instead of the work obligation, a solution was proposed in literature where the prison institution offered prisoners free jobs they could accept, except in cases where the resocialization goal was jeopardized in case a prisoner remained at the assigned job (Dufaux, 2010). The current Code of Criminal Procedure prescribes that convicted individuals can work for their own account or on behalf of associations formed in order to prepare them for social and professional reintegration. Prisoners do not sign any employment contract, so the Labour Law does not apply to them, with the exception of health and occupational safety rules and compensation that cannot be lower than 45% of the minimum wage. However, with the 2022 reforms, prison employment contract (fr. *contrat d'emploi pénitentiaire*) appear as basis for prisoners' work engagement. In the Anglo-Saxon legal system, in the absence of precise legislative or regulatory text on working conditions within the prisons, the rules applicable to prison labour are indicated in internal rules.

The most comprehensive approach is applied in Spain, where a special labour law regime is applied to prisoners, guaranteeing minimal rights (prisoners' right to promotion and training, participation in the organisation and planning of work and the right not to be discriminated against at work) (Moner de Alós et al., 2009). Bearing the numerous legal disputes in mind due to the application of specific regulations, the Government passed a regulation that defines prison labour in more detail. Prisoners are obliged to perform the tasks entrusted to them, respecting security measures and work instructions issued by the administration. The list of vacancies with job descriptions must be determined by the internal commission and published in the prescribed manner, while the distribution of vacancies is done

according to the individualized treatment programme of prisoners and their professional capacities, taking into account the length of their sentences and family commitments (Moner de Alós et al., 2009). The Autonomous Office for Prison Labour enjoys legal subjectivity and financial independence. It was established with the aim of organising labour within prison institutions.

In Spain, the general correctional-penitentiary law prescribes that prison labour is mandatory, but that it does not necessarily have to consist of productive activity. The above mentioned law contains the general principles of the prison labour, although the Constitution states that prisoners are entitled to paid work and adequate social benefits, whereby a distinction is made between productive work with compensation and non-productive unpaid work. For their unpaid work, prisoners can receive a special bonus which does not constitute a wage (Constitución Española, Article 25). In any case, the compensation must be proportional to the number of working hours or the completed performance. As comparison, in Denmark, the article of the Law on Execution of Sanctions, which stipulated the working obligation for persons sentenced to prison, was deleted, and instead it was added that prisoners have the right and duty to a certain "occupation", which may consist of work or training. From that, it can be deduced that prisoners work, attend professional training or perform some other activity recognised by the prison administration (e.g., treatment, education of their own children, work for therapeutic purposes, etc.).

Prison Labour and Forced Labour

While forced or compulsory labour is done under the threat of punishment, prison labour is the result of the convict's duty to be subjected to obligations considered useful for his reintegration.¹¹ Prison labour does not automatically fall into the category of compulsory labour prohibited by Article 8 of the International Covenant on Civil and Political Rights.¹² In accordance with international recommendations, convicted prisoners can be obliged to work, as is the case in many European countries, provided that the working conditions are structured so that the work is meaningful and paid. Feldman (2000) rightly asks what even is the purpose of prison labour and what is achieved with it, and adds "can prison labour ever be voluntary, or is it always an act of state coercion", against the people who are in a disadvantageous position. This is especially valid if one takes into account the fact that the definition of forced labour contains a component

¹¹ In Israel, refusing to work on principle and to complete the assigned tasks represents a breach of prison rules, which may be sanctioned with disciplinary measures (reprimand, solitary confinement, reduced opportunity for early release) or monetary (SitZIA, & Lopez, 2023).

¹² In that regard, it should be noted that prison labour was used during strikes at companies so as to prevent suspension of operations as soon as possible (Atkinson & Rostad 2003).

dealing with the loss of rights or benefits, which can occur in the context of prison labour if the prisoner refuses to perform the tasks entrusted to him.

The elements of coercion in prison labour are incompatible with an open labour market, free exchange and the principle of dignified work. A more serious academic debate on the legitimacy of the forced labour of prisoners has not been so far provided. There are only empirical works on the economic efficiency of prison privatization that do not take into account at all the normative issues and dilemmas that arise due to the fact that different sources of law offer diametrically opposed solutions regarding the conditions under which compulsory prison work can be performed (Guido, 2019).

Convention no. 29 describes five situations that cannot be characterized as forced labour. The exceptions also include the prison labour if certain conditions are met (Convention on Forced Labour, Article 2). Also, the European Convention on Human Rights from 1950 prohibits slavery and forced labour. In the case *Meier v. Switzerland*, The European Court of Human Rights unanimously concluded that there was no violation of Article 4 paragraph 2 of the European Convention on Human Rights (prohibition of forced labour). The case referred to the examination of the conditions for the work of prisoners who are above the age limit for the right to a pension (Nilsson, 2017). The Court noticed there was no adequate consensus among the Council of Europe member states regarding the compulsory work of convicted persons after retirement. Consequently, it is emphasized that the Swiss authorities enjoyed a significant margin of free assessment, and that, on the other hand, the existence of an absolute prohibition cannot be derived from Article 4 of the Convention (Nilsson, 2017). The applicant, *Beat Meier*, was a Swiss citizen sentenced to four years in prison. The Appellate Court suspended the execution of the prison sentence, replacing it with preventive detention (*Verwahrung*), however after refusing to work, the Competent authority of the institution imposed a stricter prison regime on him as a sanction. The prisoner appealed to the Federal Court, claiming that the Criminal Code was wrongly applied and that his human dignity and individual freedom protected by the Constitution had been violated. He also pointed out that compulsory labour is an act of discrimination, because it put him in an unfair position compared to people of the same age who are free and who do not have to work, because they have obtained the right to an old-age pension (Nilsson, 2017).

The Federal Court rejected his appeal, having found that the compulsory prison labour was not in itself opposed to human rights, provided that the work was adapted to the abilities and interests of prisoners. Working after retirement helps maintain adequate activity level. In the light of the purpose, nature and scope of compulsory labour and the manner in which it was to be done, the Court decided that it should be assessed whether Article 4 paragraph 3 of the Convention applied to this situation. The Government's argument was accepted that the obligation of prisoners to continue working even after their retirement age was an effort to

reduce the harmful consequences of deprivation of freedom (Nilsson, 2017). Adequate work contributed to a better structure of everyday life activities. Regarding the nature of work that convicted individuals who had reached retirement age could perform, the Federal Council issued an observation in response to the report of the Committee for the Prevention of Torture, where it was stated that the work had to be adjusted depending on the circumstances, and that work abilities and the health of the prisoner had to be taken into consideration. In addition to that, it was observed that the scope of work was flexible and adjusted to the personal circumstances of the prisoner, so Mr. *Meier* worked three hours a day, i.e., 18 hours a week. Also, he was paid for his work and placed in a special wing of the building together with other convicts of the same age. In order to get a better overview of things and insight into the practice of the Council of Europe member states, a comparative survey was conducted that included 28 countries. In more than half of the states, prison labour was not mandatory, while in 12 of the member states surveyed, the issue was not expressly regulated by domestic laws, but these countries allowed exceptions to compulsory labour depending on the capacity and age of the prisoner (Nilsson, 2017). In the absence of consensus among the Council of Europe member states and the Swiss government's decision-making room for manoeuvre, prison labour in this context could be considered commonplace.

Conclusion

The concept of work as a sanction for a committed criminal offence precedes modern prisons. Namely, the institution of prison was developed during the period where there was insufficient labour on the open market, and became a way of organising forced labour. Moreover, the institution of prison became a tool in the hands of the state to restrain vagrants and discipline the working class. In other words, prison served to force the poor and lazy to work. In spite of that, the socio-economic dimensions of work are visible, because it ensures economic security and existence of prisoners. Contrary to that, inactivity leads to anxiety, fear and depression, especially in situations where people are deprived of freedom. Work reduces tension, develops positive thoughts and connects people. Since work is a natural feature of man, freedom of work must be ensured in every place, including penitentiary institutions. The main advantage of work is precisely that it occupies a person's mind and eliminates negative and anxious thoughts. Apart from that, work helps prisoners confront the processes of depersonalisation and dehumanization that are characteristic of the prison environment.

In light of this, prison labour has a triple function: productive, resocialization and disciplinary one. Namely, work improves social relations and helps prisoners normalize their everyday life in conditions of restricted movement. Apart from improving self-discipline, effective work contributes to better free time

structuring. Additionally, the main compensation of work is that it alleviates or masks the negative feeling of loss of freedom. However, prison labour must not be used to achieve private profit, as indicated by international legal documents.

The primary sources of law in this matter (the United Nations Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules) are not mandatory, while the International Covenant on Civil and Political Rights only indirectly regulates the position of persons deprived of freedom. The structure and content of the provisions of the above mentioned soft law legal acts are almost identical since the European Prison Rules actually originate from the Minimum Rules, with minor differences. Namely, the European Prison Rules are more progressive and mostly aimed at correcting prisoners through work while guaranteeing a wide range of rights. Also, the International Labour Organisation considers the nature of prison labour one of the important issues, and aims to prevent exploitation thereof.

Legal regulations are preoccupied with the topic of the use of prison labour by private individuals and the imposition of labour obligations by the state. In principle, the ILO Convention no. 29 excludes from the category of forced labour work or service that is required of an individual based on a court decision. At the same time, compulsory prison labour must be done under the supervision and management of the state authorities, while prison labour for the account of a private company is allowed without additional conditions if it is voluntary.

In spite of that, the actual possibility of prison jobs that match the prisoners' interests is extremely low, as indicated by numerous studies. Since the stated claims are supported by statistical data, we wish to indicate the problems and important aspects of prison life that are of great importance for convicts, and work as means of resocialization plays a key role. Due to such circumstances, i.e., perceived deficiencies in the ability to perform purposeful work during prison term, we believe that additional and more extensive research in this area is necessary, with the aim of reducing recidivism.

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