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Review Paper

Legal nature and conditions of work of prisoners – Labor Law perspective[1]

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The work of prisoners is one of the essential elements of prison treatment, aimed primarily at improving their employability and successful social reintegration. That distinctive feature of the prisoner's work, due to which it is not subject to labor law, but to the criminal sanctions enforcement law does not, however, represent an obstacle for bringing the working conditions of prisoners closer to the working conditions of employees in the general regime of employment relationships. Therefore, the paper discusses the issue of the legal nature of prisoners' work, including situations in which a subject of private law appears as the beneficiary of their work. This included consideration of the legal regime of prisoners' work in European countries, as well as in international and European law, especially in terms of voluntariness, remuneration and working conditions of prisoners, and the enjoyment of trade union freedom and other collective rights. It was concluded that bringing the working conditions of prisoners and employees closer together is necessary, since the instruments for the protection of economic and social rights do not exclude prisoners from their scope of application. They are, therefore, the holders of all rights and freedoms, except for the rights and freedoms that are expressly limited to them by law. On the other hand, the isolation and dependence of prisoners on the administration of the institution for the execution of criminal sanctions, as well as the fact that they are excluded from the area of personal scope of labor and social legislation, facilitates the exploitation of their work and other abuses. In this sense, in contemporary science, as well as in the legislation of many European countries, the "normalization" of work in prisons is rightly affirmed, among other things, because the work of prisoners cannot achieve its most important goal - improving their employability and integration into the

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labor market after the sentence served - if the prisoners work without labor rights. In contemporary low, working in such conditions is not acceptable, and it certainly will not endear the prisoners to society, nor encourage them to respect legal and social norms.

Keywords: *Prisoner's work; Working conditions; Collective labor rights; "normalization" of prisoners' work.*

Introduction

Persons serving a prison sentence perform a number of activities. They are connected with the daily functioning of the institution for the execution of criminal sanctions (maintenance of hygiene, cooking, laundry, maintenance of gardens, etc.), and can also be aimed at education, training, physical activity and recreation (Auvergnon, 2007, p. 75). In addition, prisoners often perform work that has a production or service character, namely in workshops, factories, plants and other premises of the institution for the execution of criminal sanctions. Work, therefore, represents an integral part of the prison regime, with the fact that, throughout history, its objectives and functions have changed. In this sense, the rep*ressive function of the prisoner's work* was first observed, and it was viewed as a means for "repentance and expiation of sins", that is, as a punishment or a supplementary element of punishment. This was followed by the *moralizing function of work*, which John Howard aptly described with the maxim: "Make men diligent and they will be honest". This is followed by the emphasis on the *utilitarian value of work*, which is related to the possibility that the prisoner "covers" the costs of serving the sentence with his work (Pinatel, 1945, p. 117; Roux, 1902, p. 11-12), as well as that part of the compensation be used to support the members of the prisoner's family, to save funds for living in freedom, i.e. to pay off the debts that the prisoner has Mantouvalou, 2023, p. 50). Finally, the *disciplinary function of work* should be noted, since it contributes to ensuring discipline in prison, because "useless spending of time, leisure and boredom, even in better conditions than prison grayness, leads to conflicts, clashes, and even more severe forms of violence" (Knežić, 2011, p. 148) - *Otia dant vitia*. Today, however, the prevailing opinion is that work contributes to the *rehabilitation of prisoners and their social reintegration after release*, thus mitigating the risk of repeating criminal acts (*cf*: Baader, Shea, 2024; Felczak, 2023, p. 79-82). This means, more precisely, that in the modern time, the work of prisoners is not part of their punishment, which is why it should represent a right rather than a duty, although in practice, there are

often no conditions for the full enjoyment of freedom of work (Mantouvalou, 2023, p. 50). Also, it is not excluded that only monotonous, repetitive and pointless jobs will be available to prisoners, the performance of which cannot be perceived as anything other than punishment. This is all the more so since the refusal of those jobs can affect the volume of visits by the prisoners' family members, their opportunities for recreation and the like (Mantouvalou, 2023, p. 50-51).

The main task of the state, in this sense, consists in providing a sufficient number of suitable jobs and in organizing the work of prisoners in a way that is as similar as possible to the organization and methods that are valid for work outside the prison (*cf*. Charlot, Weissenbacher, 2014). At the same time, the state has an obligation to protect prisoners from exploitation and other abuses, which are particularly pronounced if the beneficiaries of their work are subjects of private law. This is because in the latter case there is a risk that the objectives of the prisoner's work, which concern rehabilitation and reintegration, will be overcome by efforts to achieve and maximize profits. The work of prisoners should, therefore, be focused primarily on the acquisition and development of knowledge, abilities and skills that can be useful to these persons when looking for a job on the free market, as well as for maintaining employment.

Numerous factors influenced the outlined development of prisoners' work functions. Among them, after the Second World War, the process of internationalization of human rights appears, since the relevant international impulses significantly influenced national legislation and practice. This, in particular, applies to the adoption of the Standard Minimum Rules for the Treatment of Prisoners which confirmed that the work of prisoners „shall be such as will maintain or increase the prisoners' ability to earn an honest living after release“ i.e. that „the interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution“. And under the auspices of the Council of Europe, work is considered „an important and significant element of the training and rehabilitation of prisoners, and a significant segment of the operational management of penitentiary institutions“, which is why „as far as possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release. [...] „Although the pursuit of financial profit from industries in the institutions can be valuable in raising standards and improving the quality and relevance of training, the interests of the prisoners should not be

subordinated to that purpose".[2] In this contribution, we start from the premise that working prisoners should be provided with protection that is similar to the labor law protection of employees in the general regime of employment relationships, of course, while respecting the peculiarities of the work of prisoners, above all those related to security considerations, since a working prisoner is, first of all, a prisoner, and only then a worker (Schmitz, 2022, p. 86). Prisoners must, namely, enjoy basic social rights, especially bearing in mind that they are a category of persons who, since they do not enjoy freedom of movement, do not have access to jobs available on the open market, nor do they have the opportunity to change jobs they are not satisfied with (Mantouvalou, 2023, p. 51).

1. Types of employment of persons sentenced to imprisonment in contemporary legal systems

1.1. Legal basis and qualification of work engagement of prisoners

Contemporary legal systems know mutually very different solutions related to the work of prisoners. However, the common feature is that in European countries, the work of prisoners is regulated by legislation on the execution of criminal sanctions or criminal procedural legislation, and does not presuppose entering into an employment contract. The legislation of a smaller number of countries recognizes, however, the possibility of contractually regulating the relationship between the administration of the institution for the execution of criminal sanctions (or an *ad hoc* body, which ensures the training and employment of prisoners) and the prisoner who works for the account of the administration, and in some cases the conclusion of a tripartite contract, which, in addition to these persons, is also concluded by the beneficiary company, with subsidiary or corresponding application of labor legislation (Loy, Fernández, 2007, p. 179–181; Soler Arrebola, 2007, p. 201–207).

Thus, for example, recent reforms in France, which began to take effect in May 2022, abandoned the previous solution according to which the work of prisoners was organized on the basis of an act of engagement (fr. *acte d`engagement*), which was formally signed by the head of the institution for the execution of criminal sanctions and a prisoner, but essentially it had the effect of a unilateral administrative act (Amilhat, Bowl, 2022, p. 248–251). Instead, a contractual relationship was introduced between the

[2] Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, rules 26.3. and 26.8.

working prisoner and the entity for which the prisoner works, i.e. user of prisoner's labor. The latter subject, however, is not denoted by the term employer, but by the term giver of the order (fr. *donneur d`ordre*), which can be an institution for the execution of criminal sanctions (the so-called general service, which implies that the administration for the execution of criminal sanctions directly entrusts the prisoner with performing work that enables the performance of actions necessary for the good functioning of the institution, e.g. work in the institution's kitchen, laundry or library) or a third party (e.g. concessionaire or social enterprise). In any case, the work is performed under the permanent control of the institution's management, which ensures supervision of the prisoner, discipline and safety at the workplace, because the work serves to prepare the prisoner for employment on the open market. In this sense, the prison employment contract (fr. *contrat d`emploi pénitentiaire*) was introduced as the basis for the work of prisoners.[3] That contract is not, however, a type of employment contract, which is concluded in accordance with the Labor Code, but a *sui generis* contract, regulated by the Code of Criminal Procedure, with the latter act expressly referring to the corresponding application of the Labor Code (Auvergnon, 2022 , p. 56). The new legal regime, at the same time, implies the reconciliation of the interests of three parties: the prisoner who works, the provider of work orders, and the administration for the execution of criminal sanctions (Charbonneau, 2022, p. 26). If the provider of work order is an institution for the execution of criminal sanctions, the prisoner and the director of the institution conclude a contract on prison employment, as a contract of public law, while in the case of work for another provider of the order (so-called production work), he prisoner, the prison director and the provider of the work order conclude the agreement, as an annex to the contract concluded between the prisoner and the provider of the work order (Charbonneau, 2022, p. 30). In both cases, the director of the institution retains the authorisations related to security and order in the institution. The prisoner is, therefore, subordinate to the disciplinary pregoratives of the director, who supervises the place of execution of the work and can terminate this contract by his unilateral decision, if there are justified reasons for doing

[3] Loi n° 2021-1729 du 22 décembre 2021 pour la confiance dans l'institution judiciaire (*JORF,* n°0298 du 23 décembre 2021), art. 20-26. The term "employment" (fr. *emploi*) is related to the establishment of a legal relationship regarding work for another, i.e. for a legal situation or legal status, and it should be distinguished from the term "work" (fr. *travail*), which refers to an activity linked to the establishment of a certain legal relationship (Katz, 2007, p. 42).

so related to the behavior of the worker.[4] On the other hand, the provider of work orders has the right to initiate the termination of the contract due to reasons related to the prisoner's abilities and his work results, provided that he previously indicated to the prisoner that he does not possess the necessary knowledge, skills and abilities, that is, that he does not achieve work results. Also, the provider of work orders can initiate the termination of the agreement in the event of a reduction in the volume of production activities. Finally, the ground for the termination of the contract can be the agreement of the contracting parties or resignation by the prisoner. In this way, the responsibilities assumed by the employer in a classic employment relationship are divided between the director of the institution and the provider of work orders (Charbonneau, 2022, p. 32-33).

The work of prisoners, despite similarities (and the efforts of certain lawmakers to align them), differs from work performed within the framework of an employment relationship (*cf.* Touzel-Divina, Sweeney, 2022). The most striking differences are related to the fact that the work is carried out in the institution for the execution of criminal sanctions, that is, in a closed environment, or else outside the institution, but under the control of the administration for the execution of criminal sanctions. Also, the work of prisoners is peculiar in that it is not performed primarily for the purpose of providing means of support, but is aimed primarily at the professional reintegration and resocialization of the individual after the sentence has been served. Thus, in the jurisprudence of the Supreme Court of Great Britain, the most striking difference between the work of prisoners and the employment relationship is that prisoners do not work because they have concluded a contract regulating that work, but because they have been sentenced to prison (*Cox v. Ministry of Justice* (2016) UKSC, cited according to: Mantouvalou, 2023, p. 54): "the penal situation of the prisoner constantly determines his quality as a imprisoned worker" (Ponseille, 2022, p. 303).

Furthermore, a striking difference is made by the fact that the prisoner's work is carried out within the framework of a legal relationship of public law nature, even when a contract is concluded between the prisoner and the administration of the penitentiary institution, i.e. the user company, since it is a *sui generis* contract of public law, not an employment contract (Pohlreich, 2022, p. 141). The prisoner's work, therefore, does not have as

[4] However, the Code of Criminal Procedure does not specify that the reason for terminating the contract can only be the prisoner's behavior at work or in connection with work, but in practice any violation of discipline is qualified as such (Charbonneau, 2022, p. 30).

its main objective the placing of his working abilities at the disposal of another for compensation (Decision of the Supreme Court of Spain, dated October 30, 2000, number 639, cited according to: Navarro Villanueva, 2022, p. 162). Instead, the prisoner's work is aimed at preparing him for integration into the open labor market, upon release. In this sense, the work of prisoners represents one of the essential elements of prison treatment (Cesaris, 2022, p. 193), an integral part of the system of execution of criminal sanctions, i.e. a tool for reintegration and prevention of return, which is why deviations, i.e. derogations from classic labor law rules are necessary (Charbonneau, 2022, p. 35). This is all the more so since prisoners do not have the freedom to choose a job, nor the possibility to change a job that does not match their aspirations and experience. Also, prisoners who will be engaged in work are not chosen according to their abilities to perform a certain professional activity, but, on the contrary, the activities that will be entrusted to them are chosen according to their abilities. Finally, it should be noted that the compensation that prisoners receive for their work is paid in the amount determined by law, which means that it cannot be subject to negotiation between prisoners (or their representatives) and the entity that performs the functions of employer (Decision of the Court of Appeal in Berlin (*Kammergericht*), dated June 26, 2015, No. 2 Ws 132/15 Vollz., cited in: Pohlreich, 2022, p. 156). These and other differences between the work of prisoners and work within the framework of an employment relationship do not, however, represent an obstacle for the adapted application of certain provisions of the labor legislation to prisoners, of course, to the extent that it is possible and corresponds to the legal position and specific place of work of these persons. The Court of Justice of the European Communities reasoned similarly, although, in relation to the *work of users of the services of the drug addict rehabilitation center*, since the purpose of the work was crucial for the qualification of the worker (in the sense of the Community law notion of worker).[5] It was concluded that a user of the services of a

[5] In the jurisprudence of the European Court of Justice, a Community law concept of worker was built, and that is due to the meaning that this term has in terms of the rules on the freedom of movement of workers. According to this concept, the essential elements of the term worker are *work for another, work under the direction of another and remuneration for work*. The defined elements of the term "worker", more precisely, imply that it includes persons who work for another within the scope of employment, and whose work is paid and subordinated, which means that it is performed under the direction of another. The existence of the element of remuneration in the community term "worker" does not depend on the amount and regularity of payment of compensation for work, because the

center for the rehabilitation of drug addicts, who works in that center for compensation, cannot be considered a worker, because his work is not primarily aimed at earning money, but at recovery and reintegration into the labor market (Judgment in case C-344 /87 (*Bettray v. Staatssecretaris van Justitie*), of 31 May 1989, ECLI:EU:C:1989:226). This further means that work aimed at *preserving, establishing or developing the working abilities of persons who, due to certain personal circumstances, are unable to be employed under regular conditions* - cannot be considered an economic activity, if it is only a means for their rehabilitation. Admittedly, with regard to the work of rehabilitation center service users, we should not lose sight of the fact that the *sui generis* nature of work engagement for rehabilitation purposes is also determined by the low level of productivity of these workers, as well as the fact that compensation for their work is mainly financed by subsidies from public funds. The latter two characteristics do not, however, call into question the worker's qualification, but it is not acceptable because in this case, the work is adapted to the physical and mental abilities of each worker and should contribute to them, sooner or later, renewing their abilities, in order to could get a job in the open market and lead an independent life. This is all the more so since the persons who will be engaged in the rehabilitation workshops are not chosen according to their abilities to perform a certain professional activity, but, on the contrary, the activities that will be entrusted to them are chosen according to their abilities, which is also important for the work of prisoners. The verdict in this case caused a lively controversy also due to the question of whether the indicated interpretation of the notion worker also applies to work in companies for professional rehabilitation and employment of persons with disabilities. That dilemma, in fact, concerned the question of whether all persons with sheltered employment, or the relevant exception is reserved only for persons whose work is aimed at the reintegration of workers into the labor market. The majority of authors opt for the second answer, considering that freedom of movement is guaranteed to persons with disabilities and other persons with

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qualification of a worker crucially depends on whether a certain person actually performs some economic activity (eng. *genuine and effective work /economic activity/*) and receives compensation for his work, regardless of the amount of this consideration. The worker's qualification is not affected by the motive for working for another, although from the three-part structure of the term it could be concluded that the main goal of working for another is to obtain means of support. Finally, let us also note that the work that a worker performs for another must not be of a marginal or auxiliary nature (*cf.* Kovačević, 2021, pp. 450–453).

so-called protected employment, because their work, in addition to being therapeutic, also has a lucrative purpose (Craig, de Búrca, 1996, p. 669).

1.2. Ways of organizing prisoners' work

Depending on the person who manages the work of prisoners and the person on whose behalf that work is performed, three ways of organizing the work of prisoners can be observed in foreign legal systems. The first way implies that their work is performed for the account of the administration of the institution for the execution of criminal sanctions and that the administration directs their work. In addition, prisoners can work for a private law entity, inside or outside the premises of the institution. Although it is confirmed in the Standard Minimum Rules of the UN that the administration of the institution for the execution of criminal sanctions must have primacy in the management of industrial plants and economies of the institution in relation to economic entities, in recent decades, the organization of production/service work of prisoners has been developing in a different direction. This is, among other things, due to numerous problems that burden institutions for the execution of criminal sanctions, such as insufficient spatial, material and financial conditions for the organization and development of production/providing services, the lack of qualified workers in services for training and employment of prisoners, and the impossibility of satisfactory marketing of products /service (Schmelck, Picca, 1967, p. 292). Therefore, the possibility of private initiative in the field of execution of sentences was expressly introduced in the European Prison Rules (Ignjatović, 2010, p. 69). This is also a trend in certain countries (the United States of America, Australia, Great Britain), where privatization, public-private partnerships and subcontracting are enthusiastically affirmed. Namely, it is believed that the latter mechanisms make it possible to lower the costs related to serving the sentences of the increasingly numerous prison population, as well as the acquisition of new skills, and easier payment of compensation for damages caused to victims of criminal acts. If prisoners work for private law entities, their work can be managed in two ways. First, managerial prerogatives may belong to the penitentiary (and its training and employment service) or to a specific body, which provides training and employment to prisoners (e.g The body responsible for managing the work of prisoners in all penitentiary institutions in Spain is called *Organismo Autónomo de Trabajo Penitenciario y Formación para el Empleo,* with the exception of Catalonia, where the management is entrusted to a special center - *Center d`Initiatives per a la Reinsertio*) (Navarro Villanueva, 2022, p. 158). In addition, the work

of prisoners can be managed by a subject of private law, which organizes work in its premises or in prison premises. These ways of engaging inmates are fraught, however, with numerous controversies, including the risk of abandoning the primary goal of prison work (rehabilitation) in favor of a new goal: making and maximizing profits.[6]

Foreign legal systems know several different ways of engaging prisoners to work for the benfit on of private law entities. The first large group consists of the "referral" of prisoners to work for a private law entity. This method of work engagement, which the Convention of the International Labor Organization (ILO) No. 29 refers to as hiring, includes three systems: a) the leasing system; b) general contract system; c) special contract system. In the leasing system, the state concludes a contract with a subject of private law on the basis of which the prisoner is sent to work with that subject, which, in doing so, provides accommodation, food and security, receiving in return the prerogative to hire the prisoner for work (Committee of Experts on the Application of Conventions and Recommendations (2007), para. 57). On the other hand, in the general contract system, the state provides housing and custody of prisoners, while the subject of private law provides food and means of work to prisoners (Committee of Experts on the Application of Conventions and Recommendations (2007), para. 57). In addition, the subject of private law owes the state a certain amount of money, as consideration for the use of the prisoner's work. This system is referred to as the general contract system because all able-bodied prisoners from a certain institution for the execution of criminal sanctions are sent to work for a private law entity, in contrast to the system of a special contract, in which the administration of the institution chooses prisoners (individuals or groups of convicts) who will work for this entity. As in the general contract system, the state provides

[6] Fenwick distinguishes models of prisoner engagement depending on whose authority the prisoners are under and for whose benefit they work. However, this author identifies three distinct models of participation by private law entities in the engagement of prisoners. The first and simplest is the 'consumer' model, in which private law entities purchase products created as a result of prisoner labor. The second is the 'employer' model, which implies that a private law entity directly hires prisoners and pays compensation for their work. Finally, under the third model, which Fenwick calls the 'manpower' model, institution for execution of criminal sanctions engages prisoners to perform work for the benefit of a private law entity, which is why this model would be more aptly named the 'subcontracting model' (Fenwick, 2005, p. 262).

accommodation for prisoners, with the fact that in the special contract system, it fully retains the right to manage the prisoners' work. The subject of private law is obliged to pay compensation for the prisoners' work and to provide funds and equipment for their work, while the work is managed by persons authorized by the subject of private law and who, for this purpose, are "assigned" to the institution for the execution of criminal sanction (Committee of Experts on the Application of Conventions and Recommendations (2007), para. 57). Despite the differences related to the provision of housing, food and means of work by the state and the subject of private law, all three systems have one common feature: the total results of the prisoners' work belong to the subject of private law (Committee of Experts on the Application of Conventions and Recommendations (2007)), para. 57). Finally, the employment of prisoners can take the form of placing the prisoner's working abilities at the disposal of a subject of private law (ILO Convention No. 29 uses the term 'placing at disposal'), so that it does not owe the state financial resources, but, on the contrary, receives subsidies from the state for managing the work of prisoners (Committee of Experts on the Application of Conventions and Recommendations (2007), para. 57).

2. Voluntariness of the prisoner's work[7]

2.1. Prisoner's work and prohibition of forced labor

In international law, the work required of prisoners is not considered forced labor. That exception was made because of the benefits that society can have from the work of these persons, primarily due to its rehabilitative function, as well as because of lowering the costs of serving a prison sentence (Committee of Experts on the Application of Conventions and Recommendations (2007), para. 49). The prison administration can, namely, require the prisoner to perform work, which must correspond to the abilities of each convict,[8] so that failure to comply with the order and work instructions may result in the imposition of a disciplinary penalty.

[7] This section also contains the results of our earlier research, which were published in Kovačević (2013).

[8] Thus: Standard Minimum Rules for the Treatment of Prisoners, point 71, paragraph 2 ("all prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer"); Recommendation Rec (2006)2, rule 105.2 ("sentenced prisoners who have not reached the normal retirement age may be required to work, subject to their physical and mental fitness as determined by the medical practitioner").

In this regard, it should be borne in mind that in modern law, the generally accepted definition of forced labor is the definition contained in the ILO Convention No. 29, according to which forced labor is all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily[9]. In this sense, the *absence of voluntary consent to work* and the *threat of punishment* are considered essential elements of forced labor. International instruments for the protection of human rights and fundamental freedoms, however, allow several exceptions to the prohibition of forced labor, which have in common that they are *not of a permanent nature* and require deviations from the prohibition of forced labor in the name of *general interest and social solidarity*. All applicable sources of law of international origin, however, exclude the work of prisoners from the concept of forced labor, while other exceptions differ from one instrument to another. The provisions of the applicable sources of law of international origin are not, however, harmonized with regard to the conditions under which prisoners may be required to perform forced labor. Thus, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms set only two conditions for permissible compulsory labor of prisoners: that a certain person has been deprived of his liberty or is on parole based on a court decision, and that the nature of his work is such that it can be considered work that is normal, i.e. usual as part of deprivation of liberty. The fulfillment of the conditions concerning the grounds for deprivation of liberty is also determined by the ILO Convention No. 29, although, without mentioning parole, but it does not dwell on that, but sets two more conditions for the performance of forced labor by prisoners: that it is carried out *'under the supervision and control of public authorities'* and that *'the said person is not hired to or placed at the disposal of private individuals, companies or association'*. The work required of prisoners under these conditions is not considered forced labor, which means that the state perties

[9] The International Labour Organization Convention No. 29 on Forced or Compulsory Labour (*Official Gazette of the Kingdom of Yugoslavia*, No. 297/1932), Article 2, Paragraph 1. The International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms do not contain a definition of the notion 'forced labour.' However, the boundaries (of the core) of this notion are clarified by their provisions establishing exceptions to the general prohibition of forced labour, as well as by the jurisprudence of the bodies responsible for supervising their implementation, where there is consensus that forced labour should be understood as work as defined in ILO Convention No. 29 (*cf*. Kovačević, 2023b, p. 50).

to the ILO Convention No. 29 are not obliged to ensure the voluntary work of persons convicted on the basis of a court verdict, if they work under the supervision of public authorities and if they were not hired by a private law entity. The exception in question does not apply, however, to cases of voluntary work by prisoners, which is allowed even when the conditions related to work supervision and the circle of beneficiaries of the results of the work of prisoners are not met. In this sense, there is room for the conclusion that universal international labor standards do not prohibit the voluntary work of prisoners for the benefit of private law subjects, but neither do the mandatory work of prisoners for the benefit of the state.

Foreign legislation inherits different solutions regarding the admissibility of forced labor for prisoners. Until the beginning of the XXI century, the obligation of prisoners to work was abolished only in France, Spain and Great Britain, while in other European countries there was a legal obligation for them to work. In this millennium, in accordance with the idea that the rehabilitative function of prisoner's work cannot be fully and effectively realized if there is an obligation for them to work, in many countries, including the Republic of Serbia, the obligation to work has been abolished, except for work that is necessary for functioning of the penitentiary institution (maintenance of hygiene of clothes and dormitories, cooking, etc.). However, there are also countries where the obligation to work still exists today, such as is the case, for example, in Germany, where it has been retained by the legislation of quite a few provinces: Baden-Württemberg, Bavaria, Berlin, Bremen, Hamburg, Hesse, Mecklenburg – Western Pomerania, Lower Saxony, Saxony-Anhalt, North Rhine-Westphalia, Schleswig-Holstein, and Thuringia (Pohlreich, 2022, p. 142). Prisoners are obliged to work within the limits of their physical and health abilities, while refusal of the offered job is threatened with disciplinary sanctions, except when the reason for refusal is related to attending an education or training program, since that program is equated with compulsory work (Pohlreich, 2022, p. 142). On the other hand, the obligation to work does not exist for prisoners with disabilities, prisoners who are sick (while the illness lasts), as well as for prisoners over 65 years old, and pregnant and nursing women, to the extent that these categories are prohibited from working in the general regime of employment relationship (Pohlreich, 2022, p. 142-143). The working conditions in the penitentiary institution must be similar to the working conditions of the employees, especially in terms of occupational health and safety. However, the provisions of the labor legislation are not applied to them, but the provisions of the legislation on the execution of criminal sanctions, even when the work is performed for an external "employer",

who has the authority for technical control of that work, but does not establish any legal relationship with the prisoner. In this sense, compensation for work is paid to prisoners only by the institution for the execution of criminal sanctions to wich the beneficiary company owes certain financial benefits), which is why the legal rules on minimum wage do not apply to these prestations. On the other hand, it should be borne in mind that penitentiary institutions cannot provide suitable jobs for a large number of prisoners, which is why many convicts who are obliged to work by provincial legislation do not actually have a job (Pohlreich, 2022, p. 144-145). In this sense, in practice, the obligation to work, step by step, is transformed into the possibility of work, especially since penitentiary institutions usually assign jobs only to prisoners who want to work. Finally, it should be noted that, in addition to mandatory work, which is generally performed inside the institution, prisoners in Germany can work in two other ways: on the basis of a contract with an external employer, as well as in the form of independent work, e.g. in terms of artists and scientists. The first type of work, however, can only be allowed if it serves to develop, preserve or improve the employability of prisoners, and is performed by a negligible number of prisoners. Also, the number of prisoners who are allowed to work independently inside or outside the institution is extremely modest (Pohlreich, 2022, p. 141).

It can be concluded that even in countries where there is still an obligation to perform production/service work, prisoners have the opportunity to choose „the type of employment in which they wish to participate, within the limits of what is available, proper vocational selection and the requirements of good order and discipline". In countries where the obligation to work has been abolished, the freedom to choose a job includes the right to refuse the offered job, with the fact that this can produce certain negative consequences for the prisoner's status, such as limiting the visits of family members and friends, reduced opportunities for playing sports and watching television, but also the risk that the convict will not be offered any new job in the future (Auvergnon , 2007, p. 79). This, more precisely, means that the prisoner has the right to access work, for which, first of all, he needs to express his will to work. After that, it is assessed whether he is fit for work, and then his tendencies are determined and the job where they can be manifested is assessed (Charlot, Weissenbacher, 2014, p. 323). The management of the institution for the execution of criminal sanctions takes into account not only the physical and intellectual abilities of the prisoner, but also his family obligations, of course, to the extent that this is possible (Charlot, Weissenbacher, 2014, p. 323).

Finally, it should be borne in mind that the requirement to ensure the decent work of prisoners does not presuppose the comprehensive

equalization of the work of convicts with the work of employees, because even in countries where the mandatory work of prisoners has been abolished, their work can never be described as completely free or voluntary. Instead, it is more appropriate to talk about the '*limited consent'* of prisoners to work, because they are free to choose the type of activity they will engage in (International Labour Conference, 2005, p. 28). However, the most delicate problem that threatens the effective exercise of freedom of choice of work concerns *the impact of commitment to work on mitigating the sentence*, since not accepting the offered job may result in the loss of the possibility of mitigating the sentence. Namely, one important element of forced labor can be recognized in that consequence, since the punishment under which forced labor is carried out can consist in the *loss of any right or benefit*. The Committee of Experts for the Implementation of ILO Conventions and Recommendations warns of this, which is why, in the last couple of decades, many countries that have ratified ILO Convention No. 29 have amended laws on the execution of criminal sanctions, in order to explicitly confirm the necessity of *formal (written) consent of prisoners to work on behalf of a private enterprise* (e.g. in Brazil, Colombia, Côte d'Ivoire and Suriname) or confirmed (and improved) guarantees regarding labor compensation (e.g. in Argentina and El Salvador) and other working conditions, as well as protection from social risks (e.g. in Chile and France).[10]

2.2. Grounds for deprivation of liberty

In international law, the first requirement for the exclusion of prisoners from the scope of the prohibition of forced labor refers to the *lawful deprivation of liberty based on a court decision*. This condition is fulfilled only if a certain person is deprived of liberty based on the decision of a court whose nature, composition and rules of procedure correspond to the internationally recognized standard of fair trial (presumption of innocence, equality before the law, independence and impartiality of the court, right to defense, etc.) (Fenwick, 2005, p. 269). Therefore, forced labor cannot be required from persons deprived of their liberty based on the order of the executive authority, persons who have been ordered to be deprived of their liberty by the courts who do not meet the requirements confirmed by the standards on the right to

[10] Commmittee of Experts on the Application of Conventions and Recommendations (2007), paras. 60–61, 114–115. European Prison Rules stipulate that prisoners who are employed should be covered by the national social security system to the greatest extent possible (Rule 26.17).

a fair trial, as well as unconvicted prisoners. Also, in terms of the provisions of the International Covenant on Civil and Political Rights and the European Convention on Human Rights, persons who, based on a court decision, have been conditionally released, are exempted from the prohibition of forced labor, because they may be required to perform certain work.
When it comes to unconvicted persons, the possibility of *voluntary employment of detainees* should be taken into account. The absence of the obligation to work on the part of persons who have been arrested or kept in police custody is confirmed by the Standard Minimum Rules of the UN on the Treatment of Prisoners and the European Prison Rules. The latter source of law, however, also has one, conditionally speaking, exception, which does not concern productive work, because, in accordance with rule 19.5, detainees may be required to work, if this is necessary for the maintenance of their personal hygiene and clothing hygiene and dormitories (Commentary to Recommendation Rec/2006/2 of the Committee of Ministers to member states on the European Prison Rules, p. 38). These persons may demand to work or may be offered work, which is why, for example, in certain Swiss cantons, detainees may choose to be housed in a prison for convicted persons, in order to enable them to work (International Labour Conference, 2005, p. 27).

2.3. Nature of prisoner's work

International instruments for the protection of human rights exclude from the prohibition of forced labor work "which is normally required of a person deprived of liberty based on a court decision", i.e. work which is "usual as part of deprivation of liberty". Hence, when assessing the permissibility of prisoners' work, the nature and purpose of their work must be taken into account. Namely, prisoners can only be required to carry out work aimed at preserving and improving work abilities, that is, aimed at increasing the individual's ability to find and maintain employment after release. In this sense, work that does not contain elements of rehabilitation is not compatible with the guarantee of the prohibition of forced labor.
This rule is confirmed, among other things, in the jurisprudence of the European Commission for Human Rights and the European Court of Human Rights. Thus, in the case Van Drogenbroeck v. Belgium, the Court considered the position of a person who was repeatedly convicted of theft and who, with the aim of resocialization and reintegration, worked in a company for the installation of central heating. The convict was obliged to perform that work, and his release was conditioned by the requirement

that he save a certain amount of money from the compensation he receives based on the work. As the prisoner had failed to save the money which should have made life easier for him after his release, and there was no prospect of his employment on the open market, the Committee for Returnees recommended that he continue to work in prison until he had saved 12,000 Belgian francs. The prisoner, however, believed that, due to the "vagaries of the (prison) administration", he was in a slave position, and that his prison sentence was "turned into forced labor", because he was forced to work in order to save the specified amount of money. The court concluded that in the case in question there is no place for the qualification of slavery, while regarding the alleged existence of forced labor, it found that "this factual question can remain open", because "in practice, the one whose release is conditioned by the possession of savings from compensation for the work performed in prison [...] is not far from obligation in the strict sense of the word. However [...] failure to comply with Article 5, paragraph 4 (European Convention for the Protection of Human Rights and Fundamental Freedoms - Lj. K.) does not automatically mean the existence of a violation of Article 4: the latter article, in paragraph 3 (a), allows work that is customary as part of the deprivation of liberty, which was the case here, in a way that does not violate Article 5, paragraph 1. Moreover, the work required of Van Drogenbreck did not go beyond what is 'usual' in this context, as it should have help his integration into society, and because it had as its legal basis the provisions that are valid in some other countries of the Council of Europe" (Judgment in the case of Van Drogenbroeck against Belgium, dated June 24, 1982 (application number 7906/77-ECLI:CE:ECHR:1982: 0624JUD000790677, paras. 58-59).

On the other hand, in the case of De Wilde, Ooms and Versyp v. Belgium, the nature of the work of three persons who, based on a court decision, were placed in a reception center because they did not have a roof over their heads was discussed, (sufficient) means of support, and regular occupation. Their detention in the reception center was similar to deprivation of liberty (Popović, 2012, p. 212), while, despite the peculiarity of the position of each of them, they had a common obligation to perform certain tasks, with the possibility of being disciplined if, without justified reason, refused to work. Unlike the European Commission for Human Rights, which qualified this case as a violation of the prohibition of forced labor, the European Court of Human Rights concluded that there is no place for such a qualification, because the duty of these persons "did not exceed the 'usual' limits [...]], because it was aimed at their rehabilitation" (Judgment in the case of De Wilde, Oms and Versyp) v. Belgium, dated June 18, 1971 (application no.

2832/66, 2835/66, 2899/66), ECLI:CE:ECHR:1971:0618JUD000283266, paras. 88-90).

2.4. Supervision of prisoners' work

ILO Convention No. 29 allows for the exemption of prisoner labor from the general prohibition of forced labor only if the labor is performed under the *supervision and control of public authorities*. The introduction of this requirement was motivated by the need to ensure effective protection of prisoners from exploitation, as well as their safety, so that the use of compulsory labor of prisoners is allowed only if the state has a *real* possibility to guarantee decent working conditions by supervising their work. The assessment of the fulfillment of the relevant requirement is fraught with certain practical problems, especially if subjects of private law are also involved in the organization of the prisoners' work (inside or outside the premises of the institution for the execution of criminal sanctions).
Although the fulfillment of the conditions for the effective exercise of the state's protective function will be a factual question for each individual case, it seems that when finding an answer, one must keep in mind the basic reason for determining the requirement related to supervisory powers, which is the *need to eliminate the risk of exploitation of prisoner's labor*. This condition is considered fulfilled if the private enterprise is entrusted only with the authority to issue professional or technical work instructions (Höland, Maul-Sartori, 2007, p. 143). On the contrary, the requirement in question cannot be considered fulfilled, if the supervisory powers of public authorities are limited only to the periodic inspection of the premises where prisoners work (Committee of Experts on the Application of Conventions and Recommendations, 2007, para. 53). This ultimately means that the prisoner works under the supervision of the public authorities only if they can *exercise effective, systematic and regular control*. In this sense, the ILO Convention No. 29 excludes not only complete, but also predominant delegation of supervisory powers to the subject of private law, which ultimately means that *public authorities must have an essential part of supervisory powers* (Fenwick, 2005, p. 273). The UN's Standard Minimum Rules on the Treatment of Prisoners are on the same wavelenght, stipulating that "where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel".[11]

[11] UN Standard Minimum Rules on the Treatment of Prisoners, point 73.

2.5. Circle of beneficiaries of prisoners' work results

The permissibility of prisoner's work may also depend on whether they work only for the prison authorities or make their work capacities available to subjects of private law. The European Convention for the Protection of Human Rights and Fundamental Freedoms does not respect that criterion, so the exclusion of compulsory labor of prisoners from the prohibition of forced labor is not conditioned by the requirement that the work is not performed for subjects of private law. This has been confirmed in the jurisprudence of the European Committee for Human Rights and the European Court of Human Rights, which consider that the work that a prisoner performs for a private company, based on the contract concluded between the institution and the prisoner, is work that is normally required of the prisoner[12]. On the contrary, the provisions of the ILO Convention No. 29 condition the exclusion of prisoners from the prohibition of forced labor with the requirement that the subject of private law has not engaged the prisoner for work. Fulfillment of that requirement is requested regardless of the place of work, i.e. regardless of whether the prisoner works in a workshop inside the prison premises, managed by a private company, or outside the prison premises, or in a prison managed by privately run prisons. Also, the requirement in question applies regardless of the type of work, which means that cases in which private companies hire prisoners to perform public works are also considered forced labor (Committee of Experts on the Application of Conventions and Recommendations, 2007, paras. 9, 106).

The fulfillment of this requirement is accompanied by numerous doubts, especially if the subject of private law is not only the end user of the work results, but also has the authority to manage the work of prisoners. In this connection, the question of whether the request for non-existence of

[12] "Article 4, paragraph (3) (a) (Art. 4-3-a) [of European Convention for the Protection of Human Rights and Fundamental Freedoms - Lj. K.], which deals with the question of prison labour, contains nothing to prevent the state from concluding such contracts [contracts with private companies – Lj. K.] or to indicate that a prisoner's obligation to work must be limited to work to be performed within the prison and for the state itself". (Decision of the European Commission for Human Rights in the case Twenty-one detained persons v. Germany, dated April 6, 1968 (application no. 3134/67, 3172/67 and 3188-3206/67), ECLI:CE:ECHR :1968:0406DEC000313467).

employment by the subject of private law is fulfilled only if the prisoner has not concluded an employment contract with the subject of private law appears as a sensitive issue. A negative answer seems acceptable, since the legal basis of the work (and the nature of the relationship established between the prisoner and the subject of private law) is not a decisive factor for the qualification of an impermissible exception to forced labor, but it is sufficient for a private enterprise to use the work of a prisoner. This also applies to cases in which a legal relationship is not directly established between a private company and a prisoner, but the company establishes a legal relationship only with the prison administration, which, like some temporary employment agency, directs the prisoners to work for a private company.

In this regard, it should be borne in mind that in the practice of the Committee of Experts for the Implementation of ILO Conventions and Recommendations, the work of prisoners for subjects of private law is considered to be in line with the requirements of ILO Convention No. 29, only if there is written consent of the prisoner and if the working conditions are similar working conditions of employees in the employment relationship, in terms of salary, occupational health and safety, and social security. The fulfillment of these prerequisites is considered as confirmation of the voluntary work of prisoners (Mantouvalou, 2023, p. 136). The European Committee for Social Rights also reasons in a similar way, when it indicates the need that the working conditions of prisoners should be strictly regulated and as similar as possible to working conditions outside prison, and that work for a subject of private law must be based on the consent of the prisoner (Mantouvalou, 2023, p. 136).

The limitation of the circle of beneficiaries of the results of prisoner's work should contribute not only to preventing the exploitation of their work, but also to preventing *unfair competition* on the (national and international) market. This is because the lower labor costs, which the beneficiaries of the results of the prisoner's work have, enable them to achieve a competitive advantage in the market compared to employers who hire other categories of workers (Ravnić, 2004, p. 93-94). Such a risk exists despite the rule that prisoners must be provided with conditions that are as similar as possible to the working conditions of other workers, which is especially true for the right to compensation for work. This, finally, means that subjects of private law should not make a profit from the work of prisoners, unless that work is performed in conditions similar

to the working conditions of employees, and if no recourse is made to artificially lower the compensation for the work of convicts.[13]

3. Working conditions and the need for their "normalization"

Prisoners belong to a particularly sensitive category of workers. Their vulnerability stems from the fact that they do not enjoy freedom of movement, which is why, further, they do not have access to jobs available on the open market, nor the possibility to change jobs they are not satisfied with (Mantouvalou, 2023, p. 51). This is compounded by the fact that prisoners are often excluded from the personal scope of labor and social legislation, which opens the door for the exploitation of their work and other abuses (Mantouvalou, 2023, p. 49). In this regard, the fact that the risk of labor exploitation often extends to the period after an individual's release from prison is of particular concern, primarily due to the prejudices and stereotypes that employers have towards ex-prisoners, which cause them to encounter serious obstacles in their search for work, as well as in terms of maintaining employment (cf. Combessie, 2004; Kovačević, 2023a). Finally, we should not lose sight of the conviction of a considerable number of employers that ex-prisoners are ready to perform low-paid and precarious jobs even after their release (Mantouvalou, 2023, p. 55). In this sense, contemporary science rightly affirms the abandonment of the concept according to which, due to the criminal offense committed by the prisoner, a certain level of suffering is inherent in life in prison, which manifests itself in less favorable living conditions compared to the conditions in which free people live, and as a result the catalog of prisoner's rights is more modest (Avvenire, 2022 p. 99). In that position, the belief that imprisonment can be a deterrent and just sanction is abandoned only if prisoners live and work in conditions that are less favorable than the conditions in which the poorest free citizens live and work (engl. concept of `*less eligibility*', fr. *concept de moindre éligibilité*) (Amauger-Lattes, Schmitz, 2022, p. 10). Instead of this concept, in the part that concerns the work of prisoners, the concept of the *normalization of work in prisons is affirmed*, which implies, precisely, bringing the conditions of work in prison closer to the conditions of

[13] Nevertheless, one should not lose sight of the fact that in some cases the costs incurred by private law subjects for training and ensuring the safety and health of prisoners can be higher than the labor costs of other workers, while some private "employers" fear a negative reaction from consumers to the use of prisoner's labor (International Labor Conference, 2005, p. 29).

employees in the general regime of labor relations (Amauger-Lattes, Schmitz, 2022, p. 9).

The normalization of prisoner's work, first of all, implies determining the maximum fund of their *working hours*, regulating the conditions under which their overtime work can be exceptionally allowed, as well as rules on breaks during work and weekly and annual rest (Charbonneau, 2022, p. 32).[14] *Health protection and the safety of prisoners at work* are closely related to this, whereby the legislation on the execution of criminal sanctions in some countries refers to the consistent application of labor law rules on safety and health at work and on the work of prisoners. Although this is so, this instructional norm is not, however, followed by an effective institutional framework, since the labor inspectorate, which in the general regime of employment relationship supervises the implementation of regulations in this area, can only apply preventive (advisory) measures in relation to the work of prisoners, not corrective and repressive measures (Gardes, 2022, p. 131). Also, the occupational medicine service does not participate in ensuring the protection of prisoners, there is no risk assessment process, etc. Since health does not mean only the absence of diseases and injuries, but the state of complete well-being of the individual, the normalization of work also implies the *protection of prisoners from harassment at work*. Prisoners must also enjoy the *right to equality*, that is, they must be protected against unjustified different treatment on the basis of innate and acquired personal characteristics, which represent the basis of discrimination. This can be very challenging, especially if one takes into account the need to adapt the place and organization of work to the needs of people with disabilities, as well as deciding on the distribution of a regularly limited number of jobs to prisoners based on stereotypes and prejudices related to the work of certain categories of persons (Ardré, 2022 , p. 412–413). Also, it is necessary *mutatis mutandis* to apply the concept of a valid reason for dismissal, in order to ensure that the employment of a prisoner cannot be terminated against his will, unless there are valid reasons for this related to his behavior and abilities, or to the needs of the beneficiaries of the prisoner's work.

[14] In the practice of ILO supervisory bodies, the duty of prisoners to perform *overtime work*, as well as their disciplinary punishment in case of refusal of such a request, are not considered forced labor, if it is required within the prescribed framework. At the same time, it is warned that the requirement to perform overtime work could be distorted into forced labor, if there was a threat that the prisoner's employment would be terminated if he did not work longer than full-time (Moreau, 2018, p. 1065).

In legally binding sources of international law, the qualification of work that is common as part of deprivation of liberty does not depend on the payment of fair compensation for work, nor on the protection of prisoners from illness, injury and other social risks (Judgment of the European Court of Human Rights in the case of Stummer v. Austria, dated July 7, 2011 (application no. 37452/02), ECLI:CE:ECHR:2011:0707JUD003745202, para. 132). On the other hand, the Committee of Experts for the Implementation of ILO Conventions and Recommendations, as well as non-legally binding sources on the position of prisoners, establish the rule that the organization and working conditions of prisoners should be as similar as possible to the working conditions in freedom, especially in terms of occupational health and safety, working hours and remuneration for work.[15] Therefore, making a profit from the voluntary labor of prisoners is considered fair only if the prisoners work under conditions that are most similar to the conditions of work in the open market, and on the condition that no artificial lowering of remuneration for their work is resorted to. This is all the more so since the failure to obtain fair compensation for the work of prisoners can also affect the level of wages of employees at employers, and because of the effort to lower the wages of employees to lower labor costs and make products cheaper than goods produced in penitentiary institutions (Mantouvalou, 2023, p. 53).

Historically, the recognition of prisoners' right to *compensation for work* has been associated with numerous controversies, the most significant of which is related to the premise that paid work testifies that the work of prisoners "is not a real part of the sentence" and that compensation for work "rewards the skill of the worker, not re-education of the guilty". This idea is opposed by the position that the right to compensation for work

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[15] Standard Minimum Rules for the Treatment of Prisoners, point 11, point 72, paragraph 1, and points 74-76; Resolution (75) 25 on prison labor, paragraph 1, point 4; Recommendation Rec(2006)2, rules 26.7, 26.10, 26.13 (unlike other working conditions that should be as similar as possible to work on the market, „health and safety precautions for prisoners shall protect them adequately and shall not be less rigorous than those that apply to workers outside“), 26.14 - 26.16. and 105.3. The Committee of Experts for the Application of ILO Conventions and Recommendations has determined the requirements that the work must meet in order to be qualified as voluntary work by prisoners, starting with the requirement that the conditions in which they work are, in principle, equivalent to the conditions provided to employees in similar jobs (Fenwick, 2008, p. 599).

must be viewed in the light of the basic goals of the prisoner's work. As work "causes positive changes in a person", so production is not paid with monetary compensation, but it "functions as a initiator and indicator of individual transformations of prisoners: it is a legal fiction, since it does not represent a 'free' sale of labor power, but a trick that considers educational and correctional techniques" (Foucault, 1997, p. 233). The benefit of work compensation is reflected in the fact that "as a condition of survival, it imposes on the prisoner a 'moral' way of earning a living and enables him to get into the habit of working and loving work," because if, after serving his sentence, the prisoner does not live from his work, he must live at the expense of others, primarily through the redistribution of social wealth based on the fiscal system (Foucault, 1997, p. 233).

Compensation for a prisoner's work is, first of all, peculiar in that he cannot dispose of it freely (Schmitz, 2022, p. 91). Furthermore, the amount of this compensation is not calculated on the basis of labor law rules on wages, it is regularly significantly lower than the wages of employees, and does not reflect the real value of the work of prisoners. Nevertheless, the literature warns of the need that its height should not be set below a level that could make prisoners understand their work as anything more than a punishment. It is necessary, namely, that the amount of compensation shows the prisoner that his work is appreciated and that it enables him to resocialize. This means, more precisely, that the realization of compensation in the amount that ensures the prisoner's autonomy and dignity does not contradict the goal related to the reintegration of the prisoner after serving the sentence (Auvergnon, 2022, p. 67). On the contrary, a prisoner cannot be expected to respect society and reintegrate after serving his sentence, if he is expected to work in conditions in which his dignity is violated or his basic labor rights are denied.

One of the peculiarities of compensation for the work of prisoners is that it is not subject to negotiation between the prisoner (or the prisoner's representatives) and the administration of the institution for the execution of criminal sanctions (or the user company), but its amount is determined by law. This prevents different treatment of prisoners in one institution, as well as from one institution to another, while fairness of compensation is achieved by taking into account the complexity of the work performed when determining the range of compensation for work, as is the case in Germany, for example. However, even in this case, the differences between the fees for certain jobs must not be too deep, because otherwise the good functioning of the institution could be threatened (Pohlreich, 2022, p. 147-151). The German system is also specific in that in the provinces where the legislation on the execution of criminal sanctions recognizes the obligation

of prisoners to work, compensation for work is not only paid in money, but also through the provision of certain benefits, such as days off, additional days off, assistance for repayment debts that the prisoner has, or shortening the period of serving the prison sentence (Pohlreich, 2022, p. 151). According to the European Court of Human Rights, the latter possibility is acceptable, since compensation for the work of prisoners can take different forms (Judgment of the European Court of Human Rights in the case of Floriu v. Romania, dated March 12, 2013 (application number 15303 /10), ECLI: CE:ECHR:2013:0 312DEC001530310). Compensation for work can be both monetary and non-monetary, but "*lato sensu* must always exist" (Avvenire, 2022, p. 114). However, when it comes to the amount of remuneration for the work of prisoners, the Court underlines the importance of the requirement that the remuneration be decent. Namely, it is requested that the amount of the compensation should not be such that its payment could be considered a degrading treatment, while the Court's decisions do not emphasize the requirement that the compensation should also be fair (Avvenire, 2022, p. 116-117). The latter point of view is not, however, in accordance with the concept of decent work, which was developed under the auspices of the ILO, and which implies, among other things, that the remuneration for work should correspond to the value to which the individual contributed. Although, therefore, the purpose of work in prison is "atypical" and its nature is unprofitable, it is lucrative for the beneficiaries of the work of prisoners (whether it is an institution for the execution of criminal sanctions or a concessionaire), because they make profit from this work (Gardes, 2022, p. 126-127). Therefore, compensation for prisoners' work should also be fair.

Finally, it should be borne in mind that in some countries, including 12 member states of the Council of Europe, prisoners do not *have the right to pension insurance*, while in other countries, access to this branch of social insurance depends on the type of work they perform, especially on its remuneration and on the circle of beneficiaries of their work (Mantouvalou, 2023, p. 52). In this regard, it should be borne in mind that the European Court of Human Rights concluded that a prisoner who, despite many years of work in the prison kitchen and bakery, did not complete the minimum insurance period, and consequently could not exercise the right to an old-age pension - was not harmed the right to unhindered enjoyment of property, the right to protection against discrimination and the right to protection from forced labor (Judgment of the European Court of Human Rights in the case of Stummer v. Austria, dated July 7, 2011 (application no. 37452/02, ECLI:CE: ECHR:2011:0707JUD003745202), however, several judges pointed out the fact that the prisoner was not able to complete the minimum period of

insurance and enjoy the rights from the social security system that the state retained 75% of the compensation for his work. In this sense, it was pointed out that the Convention is a living instrument and that its provisions must be interpreted in modern spirit. And the same cannot be said for the Court's assessment that the work of a prisoner which is not followed by mandatory pension insurance is work that is normally required of a person deprived of his liberty: „Nowadays, work without adequate social cover can no longer be regarded as normal work […] Even a prisoner cannot be forced to do work that is abnormal" (Partly Dissenting Opinion of Judge Tulkens, paragraph 8).

4. Collective rights of prisoners

In addition to the denial of individual labor rights, in most countries, prisoners are also denied collective rights and freedoms, starting with trade union freedoms, with an explanation related to the need to protect security and prevent disorder in penitentiary institutions (Ranc, 2022, p. 364). In this way, prisoners remain deprived of any opportunity to collectively represent, promote and protect their interests related to prison work, despite the fact that security in institutions can be ensured by other measures, including disciplinary punishment of prisoners whose behavior threatens the good functioning of the institution. This, further, means that due to objectives that can be achieved by other measures, the enjoyment of the collective rights of prisoners is absolutely prohibited. Thus, for example, the Supreme Court of the USA determined that the decision of the administration of a penitentiary institution to prohibit prisoners who founded a union from holding union meetings and encouraging other prisoners to join this association - does not constitute a violation of freedom of speech and freedom of association (*Jones v. North Carolina Prisoners' Labor Union*, 433 U.S. 119 (1977), cited in Mantouvalou, p. 57). The Court explained this decision by the fact that the association of prisoners in order to represent and promote their interests related to work can threaten order and security in the prison, which is why the prison administration must enjoy the discretionary power to take all measures necessary to ensure order and security (Mantouvalou, 2023, p. 57). This is all the more so since, according to the Court, a suitable alternative to association was available to the prisoners. The Court's decision was not, however, made unanimously, and separate opinions pointed out that prisoners should no longer be seen as "slaves of the state", and that it is not acceptable to discredit their rights and freedoms out of fear of the prisoner’s union (Dissenting opinion of Mr Justice Marshall (joined by Mr Justice Brennan), cited in: Mantouvalou, 2023, p. 57). This is all the more so since

it concerns the category of workers, who, due to restrictions on freedom of movement, cannot change jobs, nor do they have the power to improve working conditions through negotiation (Mantouvalou, 2023, p. 57 & 58). On the other hand, it should be borne in mind that the USA belongs to a small number of countries in which there are prison associations. Namely, in the 1970s, prison associations were founded in California (*Prisoner's Union*) and North Carolina (*North Carolina Prisoner's Labor Union*), which are still functioning, although they have faced numerous difficulties since their establishment (Isidro, 2022, p. 387). In Argentina, too, in 2012, a prisoner's union (*Sindicato Unico de Trabajadores Privados de la Libertad Ambulatoria*) was founded, which today has 3,000 members and is a member of the important confederation of employee unions - *Central de Trabajodores de la Argentina* (Isidro, 2022, p. 387-388). Since it is recognized by the federal prison service, this union has the authority to negotiate with the administrations of the institutions for the execution of criminal sanctions, as well as with the companies that hire the prisoners - on the working conditions of the prisoners.

However, when it comes to European countries, the exception is Germany, where the German Prisoner's Union (*Deutsche Gefangenengewerkschaft /DGG/*) was founded in 1968, since the existing unions were not interested in the working conditions of prisoners (Pohlreich, 2022, p. 155). Also, there have been attempts to establish regional unions of prisoners, but they have regularly lasted only for a short time, while the most recent initiative for unionization came from convicts working in Tegel prison in Berlin. In 2014, they founded an union (*Gefangenen-Gewerkschaft/Bundesweite Organization /GG-BO/*), which advocates for the effective enjoyment of union freedoms, the application of rules on the minimum wage of employees to prisoners, and the inclusion of prisoners in the social security system (Pohlreich, 2022, p. 155). In this regard, it should be borne in mind that the German courts have taken opposite positions on this issue, while the Federal Constitutional Court has not yet ruled on it, although the initiative was submitted back in 2015 (Pohlreich, 2022, p. 155). The decision of the Higher Regional Court in Hamm confirmed that the Constitutional guarantees of freedom of association and union freedom apply, among other things, to prisoners (Decision of the Higher Regional Court (*Oberlandesgericht*) in Hamm, dated June 2, 2015, number OOO- 1 Vollz (Ws) 180/15, cited according to: Pohlreich (2022), p. 155 & 156), while the Court of Appeal in Berlin, on the contrary, rejected the possibility of enjoying freedom of association by prisoners (Decision of the Court of Appeal in Berlin (*Kammergericht*), dated June 26, 2015, number 2 Ws 132/15 Vollz., cited by: Pohlreich, 2022, p. 156) . The latter decision is explained by the fact that

prisoners are not hired on the basis of an employment contract, they have an obligation to work, they receive compensation, the amount of which is determined by law, and they do not have the freedom to choose a job (Pohlreich, 2022, p. 156). In this sense, it was concluded that denying the possibility of unionization of prisoners does not violate the freedom of association, since the subject limitation of this freedom is proportional to the legitimate goal of ensuring the good functioning of the system of penitentiary penitentiarz institutions. This court decision is criticized in the literature, first of all, in the light of the European Prison Rules, which confirm that work in prison, under no circumstances, may be imposed as a punishment (Pohlreich, 2022, p. 156). Also, it is pointed out the rule that freedom of association can be limited only in exceptional situations, in which it is necessary and expressly prescribed by law, which is not the case in Germany (Pohlreich, 2022, p. 156). The European Convention for the Protection of Human Rights and Fundamental Freedoms allows the restriction of freedom of association for the protection of public security, the prevention of disorder or crime, and the protection of health, but does not mention prisoners as a category of persons who may be restricted from freedom of association (this was done only with regard to members of the military, police and state administration).[16] The need to prevent disorder or crime can be considered a legitimate reason for restricting the freedom of association of prisoners, but we should not lose sight of the fact that the European Convention is a living instrument, and that prisoners, after serving their sentence, remain the holders of all rights, except the right to freedom of movement. In this sense, in a decision of the European Court of Human Rights, it was confirmed that there is still no consensus on this issue in Europe, which is why the discretionary decision-making (margin of appreciation) is left to the states (Judgment of the European Court of Human Rights in the case Yakut Republican Trade-Union Federation against Russia, dated March 7, 2022 (application no. 29582/09), ECLI:CE:ECHR:2021:1207JUD002958209). In the separate opinions of the two judges, however, it was indicated that the majority decision of the Court was based on political rather than legal reasons, and that the complete prohibition of freedom of association of prisoners is not in accordance with the Convention, because a general reference to the need to prevent disorder is not a sufficient reason for denying the enjoyment of freedom of association to such a sensitive category of workers: "we are not blind to the realities of prison life. Allowing prisoners to join a trade union (or any association, for that

[16] European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11, Paragraph 2.

matter) and to develop trade-union activities could lead to situations contrary to prison discipline, and even give rise to disorder. We have no difficulty in accepting that the competent authorities are entitled to regulate the activities of associations formed by inmates. It is, for instance, perfectly legitimate to prohibit collective actions that might seriously jeopardise security or order in prisons. But that is not what this case is about. The impugned interference concerns a total ban on trade unions in a prison context. [...] We are unable to identity the "convincing and compelling reasons" that could justify such a total ban. We do not even see any reasons that could be considered (merely) sufficient to justify a total ban. Any restriction on freedom of association, including trade-union freedom, and even in a prison context, must strike a fair balance between the rights of the individuals concerned and the general interest pursued by the public authorities. In our opinion, it has not been demonstrated in the present case that the balance struck was a fair one. Given their vulnerable position, prisoners may even have a strong interest in securing respect for their right to join an association that defends their individual and collective rights. […] Even if the dialogue engaged will be different when there is a special relationship of authority, as in a prison situation, it should not be excluded as a means of achieving or promoting "social justice and harmony" […], the mere fact that working conditions for prisoners are different to those for ordinary workers […], cannot in itself be a sufficient reason for banning prisoners from forming or joining a trade union" (Joint dissenting opinion of judges Lemmens and Serghides, points 6-8).

Similar arguments are presented in the literature: "There is nothing that stands against the recognition of collective labor rights for working prisoners. On the contrary, their fundamental character forbids them to be denied. [...] It is forgotten that, in addition to the conflicts that collective rights express, their enjoyment can *in fine* be a source of appeasement" (Isidro, 2022, p. 388-391). In this sense, the proposals for the recognition of collective rights for prisoners are no longer considered utopian: "all rights that can give prisoners a certain control over their work, such as the right to expression, and a *fortiori*, the rights of workers to representation, unionization or strike, are not called into question" (Shea, 2005, p. 355).

Conclusion

The work of a prisoner cannot be considered an employment relationship, because it is performed in a closed environment, or else outside the institution, but under the control of the administration for the execution of criminal sanctions, so that the criminal law situation of the prisoners

constantly determines their status as "workers". This means, more precisely, that work is one of the essential elements of prison treatment, and that, in contrast to employment, it is not performed primarily for the purpose of making work capacities available to another for compensation. This is all the more so since prisoners do not have the freedom to choose a job, but the activities that will be entrusted to them are chosen according to their abilities. Those distinctive features of the prisoner's work - due to which it is not subject to regulation of labor law, but to the law on execution of criminal sanctions - are not, however, an obstacle for bringing the working conditions of prisoners closer to the conditions of work in the general regime of employment relationships. The rapprochement, moreover, seems necessary, since international instruments for the protection of economic and social rights, as well as contemporary constitutions, do not exclude prisoners from their scope of application, but they, upon serving a prison sentence, remain the holders of all rights and freedoms, except those which are expressly limited to them by law (Schmitz, 2022, p. 72, 81). However, being the holder of rights is not the same as enjoying the conditions for their effective exercise. This is all the more because the prisoners are torn from the regular social context, they are isolated and dependent on the administration of the institution for the execution of criminal sanctions. All this, together with the fact that they are excluded from the scope of labor and social legislation, facilitates the exploitation of their work and other abuses. In this sense, in modern science, the concept of normalization of work in prisons is rightly affirmed, which implies, precisely, bringing the conditions of work in prison closer to the conditions of employees in the general regime of labor relations. This is necessary not only because fundamental labor rights belong to everyone who works, but also because the work of prisoners cannot achieve its most important goal - improving the employability of prisoners and their integration into the labor market after serving their sentence - if work in prisons exposes the risk of labor exploitation and other abuses, i.e. if prisoners work without labor rights. In contemporary law, working in such conditions is not acceptable, and it certainly will not endear the prisoners to society, nor encourage them to respect legal and social norms. These ideas are gradually being implemented in the legislation of European countries, although, from a comparative law point of view, there are very different solutions. Also, it can be observed that, compared to the normalization of living conditions in prisons, which has been intensively ensured since the seventies of the last century, the process of normalization of working conditions proceeds much more slowly (Amauger-Lattes, Schmitz, 2022, p. 11-13). Therefore, it is important that,

even with small steps, the position of working prisoners is constantly improved, primarily in the context of creating conditions for the effective exercise of fundamental (individual and collective) rights at work and in connection with work.

References

Amauger-Lattes, M.-C., Schmitz, J. (2022). Propos introductifs. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (9–19), Institut Francophone pour la Justice et la Démocratie.

Amilhat, M., Boul, M. (2022). Contrats de concession de main-d`œvre pénale. Quand la concession cache la relation de travail. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (pp. 241–254). Institut Francophone pour la Justice et la Démocratie.

Ardré, P. (2022). L`accès à lemploi en détention. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (pp. 395–418). Institut Francophone pour la Justice et la Démocratie.

Auvergnon, P. (2007). Le travail en prison dans quelques pays européens: du non-droit au droit aménagé. *Bulletin de droit comparé du travail et de la sécurité sociale*, 73–105.

Auvergnon, P. (2022). Droit du travail en prison: goutte à goutte l`eau creuse la roche. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (pp. 45–68). Institut Francophone pour la Justice et la Démocratie, 45–68.

Avvenire, H. (2022). La protection du principe européen de dignité du travailleur-détenu, histoire d`un aller et retour. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (97–118), Institut Francophone pour la Justice et la Démocratie.

Baader, M., Shea, E. (2024, July 25). Le travail pénitentiaire, un outil efficace de lutte contre la récidive?. *Champ penal*, 4, *https://journals.openedition.org/champpenal/684*.

Cesaris, L. (2022). Le travail dans le système pénitentiaire italien: encore des probèmes à résoudre. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (pp. 177–194). Institut Francophone pour la Justice et la Démocratie.

Charbonneau, L. (2022). La réforme du statut du détenu travailleur: un chagement de paradigme. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (pp. 25–44). Institut Francophone pour la Justice et la Démocratie.

Charlot, C., Weissenbacher, A. (2014). Le travail des détenus aux prises avec l`égalité. In J.-F. Akandji-Kombé (dir.), *Égalité et droit social* (pp. 307–337). IRJS Édition.

Combessie, P. (2004). Intégration sociale des anciens détenus. Analyse des logiques de la justice pénale et de leurs effets. In S. Arcand, J. Cantin (dir.), *Au-delà du système pénal: l`intégration sociale et professionnelle de groupes judiciarisés et marginalisés* (pp. 231–248). Presses de l`Université du Québec.

Craig, P., de Búrca, G. (1996). *EC Law: Texts, cases and materials*. Clarendon Press.

Felczak, J. (2023). Employment as a part of rehabilitation: A review of similarities and differences between female and male criminals. *Studia Iuridica Lublinensia*, *32*(5), 77–104.

Fenwick, C. (2005). Private use of prisoners' labor: paradoxes of International Human Rights Law. *Human Rights Quarterly*, *27*(1), 249–293. https://doi.org/10.1353/hrq.2005.0005

Fenwik, C. (2008). The International Labour Organization: An integrated approach to economic and social rights. In M. Langford (ed.), *Social rights jurisprudence. Emerging trends in international and comparative law* (pp. 591–612). Cambridge University Press.

Fuko, M. (1997). *Nadzirati i kažnjavati. Nastanak zatvora*, Izdavačka knjižarnica Zorana Stojanovića.

Gardes, D. (2022). La condition juridique du travailleur détenu confrontée à la notion de „travail décent". In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (pp. 119–135). Institut Francophone pour la Justice et la Démocratie.

Höland, A., Maul-Sartori, M. (2007). Le travail des détenus dans les prisons en Allemagne. *Bulletin de droit comparé du travail et de la sécurité sociale*, 135–164.

Ignjatović, Đ. (2010). *Pravo izvršenja krivičnih sankcija*. Pravni fakultet Univerziteta u Beogradu.

International Labour Conference (2005). *A global alliance against forced labour. Global report under the follow-up to the ILO Declaration on Fundamental Principles and Rights at Work*. International Labour Office.

Isidro, L. (2022). Penser les droits collectifs des travailleurs en prison. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (377–391), Institut Francophone pour la Justice et la Démocratie.
Katz, T. (2007). *La négotiation collective et l'emploi*, L.G.D.J., Paris.
Knežić, B. (2011). Nesklad zakona i mogućnosti osposobljavanja zatvorenika. *Strani pravni život* (3), 141–150.
Kovačević, Lj. (2013). Zabrana prinudnog rada u međunarodnom pravu, sa posebnim osvrtom na granice obaveznog rada zatvorenika. In Đ. Ignjatović (ur.), *Kaznena reakcija u Srbiji. III deo* (pp. 220–245). Pravni fakultet Univerziteta u Beogradu.
Kovačević, Lj. (2023a). Osuđivanost radnika kao smetnja za zasnivanje radnog odnosa. *Radno i socijalno pravo* (1), 87–114.
Kovačević, Lj. (2023b). Član 6 – Pravo na rad. In Grupa autora, *Priručnik za primenu Međunarodnog pakta o ekonomskim, socijalnim i kulturnim pravima* (pp. 46–61). Ministarstvo za ljudska i manjinska prava i društveni dijalog.
Loy, G., Fernández, S. (2007). Le travail des détenues dans les prisons en Italie. *Bulletin de droit comparé du travail et de la sécurité sociale*, 2007, 165–198.
Mantouvalou, V. (2023). *Structural injustice and workers rights*. Oxford University Press.
Moreau, M.-A. (2018). ILO Convention 29 – Forced Labour Convention, 1930 (No. 29). In E. Ales, M. Bell, O. Deinert, S. Robin-Olivier (Eds), *International and European Labour Law – a commentary* (1049–1065). Nomos/Verlag C.H. Beck/Hart Publishing.
Navarro Villanueva, C. (2022). Le travail dans les prisons espagnoles: la vison des personnes condamnées. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (pp. 157–171). Institut Francophone pour la Justice et la Démocratie.
Pinatel, J. (1945). *Précis de science pénitentiaire*. Sirey.
Pohlreich, E. (2022). Le droit du travail en prison en Allemagne. Une législation entre nobles aspirations, insuffisances et atermoiements. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (pp. 139–156). Institut Francophone pour la Justice et la Démocratie.
Ponseille, A. (2022). Qualité de travailleur et situation pénal de la personne détenue: quelles interactions?. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison?*

Enjeux et perspectives d`une réforme (pp. 301–320). Institut Francophone pour la Justice et la Démocratie.
Popović, D. (2012). *Evropsko pravo ljudskih prava.* JP „Službeni glasnik".
Ranc, S. (2022). La representation collective des travailleurs détenus clipsée par la consécration législative d`un contrat de travail. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (363–375), Institut Francophone pour la Justice et la Démocratie
Ravnić, A. (2004). *Osnove radnog prava – domaćeg, usporednog i međunarodnog.* Pravni fakultet Sveučilišta u Zagrebu.
Roux, R. (1902). *Le travail dans les prisons et en particulier dans les maisons centrales*. Arthur Rousseau.
Schmitz, J. (2022). Les paradoxes de l`approche du travail carcéral par les droits fondamentaux. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (pp. 71–96). Institut Francophone pour la Justice et la Démocratie.
Shea, E. (2005). Les paradoxes de la normalisation du travail pénitentiaire en France et en Allemagne. *Déviance et Société*, *29*(3), 349–365. https://doi.org/10.3917/ds.293.0349
Soler Arrebola, J. A. (2007). La relation spéciale de travail des détenus dans des ateliers pénitentiaires en Espagne. *Bulletin de droit comparé du travail et de la sécurité sociale*, 199–222.
Touzel-Divina, M., Sweeney, M. (2022). Des (et non de la) qualifiqations de la „relation de travail" en prison. In J. Schmitz, M.-C. Amauger-Lattes (dir.), *Quelle normalization de la relation de travail en prison? Enjeux et perspectives d`une réforme* (pp. 273–299). Institut Francophone pour la Justice et la Démocratie.

Sources of law and jurisprudence of supervisory bodies

Loi n° 2021-1729 du 22 décembre 2021 pour la confiance dans l'institution judiciaire (*JORF*, n°0298 du 23 décembre 2021).
Standard Minimum Rules for the Treatment of Prisoners, adopted August 30, 1955 by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, U.N. Doc. A/CONF/611.
Commmittee of Experts on the Application of Conventions and Recommendations (2007). *General survey concerning the Forced Labour Convention, 1930 (No. 29), and the Abolition of Forced Labour*

Convention, 1957 (No. 105). International Labour Conference, 96th Session.
Konvencija Međunarodne organizacije rada broj 29 o prinudnom ili obaveznom radu (*Službene novine Kraljevine Jugoslavije*, broj 297/1932).
Resolution (75) 25 on prison labour, adopted by the Committee of Ministers on 18 September 1975 at the 248th meeting of the Ministers' Deputies.
Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules.
Odluka Evropske komisije za ljudska prava u predmetu *Twenty-one detained persons v. Germany*, od 6. aprila 1968. godine (predstavke br. 3134/67, 3172/67 i 3188-3206/67), ECLI:CE:ECHR:1968:0406DEC000313467.
Presuda Evropskog suda za ljudska prava u predmetu Van Drogenbrek (*Van Droogenbroeck*) protiv Belgije, od 24. juna 1982. godine (predstavka broj 7906/77), ECLI:CE:ECHR:1982:0624JUD000790677.
Presuda Evropskog suda za ljudska prava u predmetu De Vilde (*De Wilde*), Oms (*Ooms*) i Versip (*Versyp*) protiv Belgije, od 18. juna 1971. godine (predstavke br. 2832/66, 2835/66, 2899/66), ECLI:CE:ECHR:1971:0618JUD000283266.
Presuda Evropskog suda za ljudska prava u predmetu Štumer (*Stummer*) protiv Austrije, od 7. jula 2011. godine (predstavka broj 37452/02), ECLI:CE:ECHR:2011:0707JUD003745202.
Presuda Evropskog suda za ljudska prava u predmetu Floriu (*Floriou*) protiv Rumunije, od 12. marta 2013. godine (predstavka broj 15303/10), ECLI:CE:ECHR:2013:0312DEC001530310.
Presuda Evropskog sud aza ljudska prava u predmetu Federacija sindikata Republike Jakutije (*Yakut Republikan Trade-Union Fedration*) protiv Rusije, od 7. marta 2022. godine (predstavka broj 29582/09), ECLI:CE:ECHR:2021:1207JUD002958209.
Presuda Evropskog suda pravde u predmetu C-344/87 (*Bettray* v. *Staatssecretaris van Justitie*), od 31. maja 1989. godine, ECLI:EU: C:1989:226.