

Ivan D. Milić, Ph.D.
Assistant
University of Novi Sad
Faculty of Law Novi Sad

UDC.349.23(497.11)
Original research paper

Darko T. Dimovski, Ph.D.
Associate Professor
University of Niš
Faculty of Law Niš

LEGAL ORGANIZATION OF THE WORK OF PERSONS DEPRIVED OF LIBERTY IN SERBIA

Abstract

In Serbia, there are several categories of persons deprived of their liberty, which for the time while they are in a penal institution have certain rights and obligations. Thus, in penal institutions, the sentence of imprisonment, which was pronounced in the criminal, as well as in the misdemeanor procedure, is served. The penalty of juvenile imprisonment shall be executed in the penitentiary institution for juveniles. The educational measure of referral to a correctional home is executed in a Juvenile Correctional Facility in Krusevac. In penitentiary institutions is also executed the punishment of supletory prison, as also as detention. For all persons is a common, and that is that they are deprived of their liberty, and their treatment while deprived of their liberty differ.

The subject of the author's work is the work of persons deprived of their liberty, that is, their legal order in the Republic of Serbia. The aim of the work is to see how the legislator has regulated the working engagement of persons deprived of liberty, but also to see how the sub-legal acts further regulate this area. The current regulations governing the working engagement of persons deprived of their liberty will be critically analyzed.

Key words: *work, convicted, deprivation of liberty, imprisonment, detention.*

Introduction

There are a large number of regulations in the field of enforcement of sanctions, which exclusively regulate the field of execution of sanctions or contain only certain provisions related to the execution of one or more specific criminal sanctions. The basic law regulating the enforcement of criminal sanctions is the Law on Execution of Criminal Sanctions, in which provisions regulates the working engagement of

convicts.¹ The ZIKS shall regulate, unless otherwise provided by a special law, the procedure for the enforcement of criminal sanctions against adult persons, the rights and obligations of the persons subject to the criminal sanctions, the organization of the Administration for the Execution of Criminal Sanctions, the supervision of its work, the enforcement of sanctions imposed for economic offenses and misdemeanors, seizure of property gain obtained by criminal offense or economic offense and application of the detention measure. In the procedure of execution of criminal sanctions against minors, as well as in the procedure of execution of the sentence of imprisonment imposed for a misdemeanor, the provisions of the ZIKS shall apply, unless otherwise provided by a special law.² The work of convicted persons (adult offenders) is in principle regulated by the ZIKS, while it is regulated more closely by the by-law - the Ordinance on the work of convicted persons.³

Regarding the convicted persons who are serving the sentence of juvenile imprisonment, the provisions on their working engagement are also contained in the Law on Juvenile Offenders and Criminal Protection of Juveniles,⁴ as well as the Ordinance on the House Rules of the Penitentiary and Juvenile Institution for Juveniles.⁵ The provisions on the work of detained persons also contain the Rulebook on the Execution of the Detention Measure,⁶ while the provisions on the work of minors during the execution of the educational measure referral to the correctional home are in the Ordinance on the house rules of the correctional facility.⁷

The work of convicted persons during the serving of a prison sentence differs from whether the convicted person is serving a prison sentence at a penitentiary institution for adult convicts, a juvenile penal institution, whether it is a matter of persons in detention or about minors who are in custody - House of Kruševac.

¹ Law on Execution of Criminal Sanctions, Official Gazette of RS, no. 55/2014. (hereinafter ZIKS)

² Article 1 para. 1 and 2 of the ZIKS

³ Rulebook on the work of convicted persons, Official Gazette of RS, no. 145/2014

⁴ Law on Juvenile Offenders and Criminal Protection of Juveniles, Official Gazette of RS, no. 85/2005. (in further text ZM)

⁵ Law on Juvenile Offenders and Criminal Protection of Juveniles, Official Gazette of RS, no. 85/2005. (in further text ZM)

⁶ Rulebook on Execution of Detention Measures, Official Gazette of RS, no. 132/2014.

⁷ Rulebook on the home order of the correctional facility, Official Gazette of RS, no. 71/2006. This bylaw is made Minister of Justice based on Article 133 and Article 167, Paragraph 5 of the Law on Juvenile Offenders and Criminal Protection of Juveniles ("RS Official Gazette", No. 85/05).

1. Arrangement of working engagement of convicted persons in correctional institutions and district prisons

According to the ZIKS, the work of convicted persons is not an obligation, but only a right while serving the sentence of imprisonment, and only if the prison sentence is served in the penitentiary institution.⁸ Working engagement at the time of serving a prison sentence today is a privilege for a small number of convicted persons, the reason is that there is no need for the work of a large number of prisoners today. Given that there is a small need for the engagement of prisoners, only "selected" convicts can be employed in or outside the penitentiary, and the decision is made by the prison authorities. Within the Penitentiary, there is a Training and Employment Service, which, among others, has the task of training convicts for work, organizes their work.⁹

Products and services from the work of the Training and Employment Service can be used for the needs of the Administration, their own needs of the institution and for the needs of other institutions. The Institute may sell products and services in the course of training and work of the convicted persons on the market. Revenue from the sale of products and services from the training and work of the convicted persons is used by the Institute, in accordance with the financial plan of the Institute, adopted with the consent of the Director of the Management Board. Revenues are used to pay the costs incurred by the work of convicted persons, compensation for work and rewards for the work of convicted persons, technological improvement of work and improvement of living conditions, education and work of convicted persons. The purpose of the working engagement of convicts is not primarily economic gain, but that the convicts acquire, maintain and increase their working abilities, work habits and professional knowledge in order to enable the conditions for successful reintegration.

Every worker's engagement of a prisoner is "paid", so that the convicted person is entitled to a financial compensation of at least 20% of the lowest labor cost in the Republic of Serbia, while 50% is increased for work longer than full-time. A prisoner may not have money with himself during the serving of a prison sentence, so that this money is placed on the account of a convicted person, and he can freely dispose of it

⁸ The prison sentence in the Republic of Serbia can be executed in the penitentiary institution or the premises where the convicted person lives - the so-called. house prison. The punishment of juvenile imprisonment can not be carried out in the premises where the convicted person lives.

⁹ See Art. 23 ZIKS. Training for work and professional training of convicts is carried out through theoretical preparation and practical training, according to the possibilities of the institution. Art. 41 st. 3 of the House Rules on Correctional Institutions and District Prisons, Official Gazette of RS, no. 110/2014.

with that money. It is important to emphasize that he does not count the convicted work engagement in the insurance period, and the monetary compensation paid to the convict is paid on taxes and contributions. If the convicted worker is engaged outside the institute, then the institution belongs to the market fee, and the convictee receives compensation from the institution. Apart from the right to monetary compensation, employed convicted persons have other rights that also have persons in employment, such as the right to the right to daily, weekly and annual leave; prisoners enjoy work safety in accordance with regulations governing occupational safety.¹⁰

The Ordinance on the Work of Convicted Persons regulates the working engagement of convicted persons. Prisoners can be employed in the following areas of work: 1) production work - for industrial, agricultural and craft production; 2) services - catering, trade, craft, intellectual and technical; 3) physical and (other) occasional jobs.¹¹ The expert team proposes to the manager of the institute the working engagement of the convict on the basis of: the established degree of risk, psychological, physical and health abilities, professional qualifications, expressed wishes of the convicted and according to the possibilities of the institution.

1.1. Work in the workplace where the prisoner is employed

During the serving of a prison sentence, the convicted person has certain rights and obligations. Regarding the subject of this paper, it is important to point out that a special suit can be awarded to the convicted person, which is that he performs jobs at his work place while serving the sentence. Namely, the ZIKS prescribes that at the request of the person who was first sentenced to imprisonment for up to six months, the Director of the Administration may authorize, during the period of the sentence, to perform the duties at the workplace where he was employed at the time of receiving the order for execution of the sentence, if there are justified reasons for this, and the offense for which it is convicted is not related to those matters.¹² In order for the convict to get this benefit, certain conditions must be fulfilled:

1. The convicted person must file an application. It is that this convenience is never granted ex officio, but only if the convicted person submits an application.

2. Only if a prison sentence of up to six months has been imposed on the convicted person, this benefit can be obtained. If imprisonment for more than six months has been pronounced, there is no possibility of granting this benefit to the convicted person. If the sentenced prison sentence exceeds six months, the employment relationship with the convicted person ceases under the law.

¹⁰ See Art. 98-112 of ZIKS

¹¹ Art. 3. of Rules of the prisoners work, Official Gazette of the Republic of Serbia, no. 145/2014

¹² Art. 102 of ZIKS

3. This special advantage can only be achieved by the primary perpetrator of the criminal offense. In other words, the returnee can not be given this benefit.

4. The convicted person should be employed at the time of the receipt of the prison sentence. Employment should be viewed from the angle of the Labor Law.

5. The ZIKS shall prescribe that there should be justified interests in order to enable the convict to benefit from this benefit. Now the question arises - when there are justified interests? In our opinion, the convict should be given this benefit if it is the only source of income in his family, if this is the only way to support his family.¹³ Is not it better to allow the convict to work, to feed his family in this way, but that members of the family of a convicted person fall under the burden of the state and the society? Who cares about the family of the convict, especially about his children (if any) while in prison? Apart from being able to provide means of subsistence, this benefit is also a way that the convicted person does not erase contacts with the outside world, above all with the family and the working community. When executing the prison sentence, the social dimension of that sentence should also be taken into account, therefore, the members of the family of the convicted persons shall also be taken into account.

6. The offense that the convicted person has committed must not be related to the affairs he performs. Thus, for example, if the convicted person committed the criminal offense of abuse of office, there would be no place to allow such an advantage to continue to work in the same workplace.¹⁴

2. Working engagement of persons deprived of liberty in a prison for juveniles

In the Republic of Serbia, there is only one institution where juveniles are serving the sentence of juvenile imprisonment, and under certain conditions, adult offenders too, which is a correctional facility for minors - located in Valjevo. Regulations that regulate, in one part, the execution of sentences in this penitentiary institution also contain one important difference regarding the working engagement of the persons deprived of liberty, in relation to convicted persons in penitentiary institutions and district prisons. The word is about that for them working engagement is mandatory. Thus, ZM provides: based on the treatment of convicted minors makes inclusion in the educational beneficial engagement with the appropriate fee (...). Also, Home order policy of the penitentiary institution for juveniles prescribes that a

¹³ Although, in practice, there are certainly other justified reasons for enabling this benefit.

¹⁴ More on this see Ivan Milić, Individualization of the sentence of imprisonment - criminological, criminal and penological aspects, Novi Sad, 2017 p. 399-402. (doctoral dissertation).

juvenile capable of employment has a right and obligation to work. It seems that the regulators have forgotten the provisions of the Constitution of the Republic of Serbia, which prohibits all forms of forced labor.

3. The work of the person deprived of liberty who is serving the sentence of imprisonment in the premises where he or she lives

The sentence of imprisonment other than being served as a rule in penal institutions may, under certain conditions, be sustained even in the premises where the convicted person resides. This is the penal sentence so-called home prison. Namely, if the perpetrator of the criminal offense impose a sentence of imprisonment of up to one year, the court may at the same time determine that it will be enforced by serving the convicted person in the premises where he / she lives. Regarding our subject of interest, two questions are raised: 1. Whether the convict can be engaged in employment (it is thought that he is engaged in working as well as convicted persons serving prison sentences in penal institutions); and 2. Whether a prisoner can leave the premises where he resides as he would go to work (here we mean that the convicted person performs jobs in the workplace he was employed before the serving of the sentence). On the basis of our current regulations, it can be concluded that the convict, who is sentenced to imprisonment in the premises where he or she lives, can not be engaged in work. On the other hand, if the prisoner is employed, he may be allowed to leave the premises where he lives. Namely, the Law On Non-institutional Sanctions and Measures prescribes that in certain cases the convicted person may be allowed to leave the premises in which he resides. Thus, in Article 24, inter alia, it is prescribed that a convicted person may be allowed to leave the premises for the purpose of going to work, if the offense for which he is convicted is not related to work. This legal solution is quite imprecise.

4. Working engagement of detained persons

There are not so small number of detainees in Serbian penitentiary institutions. During the application of detention, detainees are detained separately from convicted persons. Regarding the subject of our interest in this paper, the question of working engagement of detainees is raised. Regulations that regulate life during the application of the detention measure are the Rulebook on the Execution of the Measure of Detention and in it one article also regulates the issue of the working engagement of detainees. Article 44 prescribe "upon the approval of the body that conducts the procedure, and with the consent of the manager of the institution, the detainee may, at his request, be employed to work in the field of the institute corresponding to his physical and psychological characteristics, provided that this is not detrimental to the conduct of the proceedings". According to this provision of the by-law act, several

conclusions can be reached. 1. An arrested person may only be engaged in the work of the institute, but not outside of it. 2. An arrested person must apply for work engagement. 3. In order for a detained person to be engaged in work, the authority conducting the procedure must authorize and the manager of the institution agrees. On the basis of the aforementioned, it is not difficult to come to the conclusion that the procedure for working engagement of detained persons is more complicated than when it comes to convicted persons. The detained person is in a more unfavorable position than the convicted person, because he can not be engaged in work outside the prison. In addition, the convicted person may be permitted to perform work in the workplace where he was employed, but such a possibility does not exist for a detained person.

5. Working engagement of the juvenile in the correctional facility

Referral to the correctional facility is the strictest educational measure. In the Republic of Serbia, there is only one institution in which this measure is being implemented, which is the " Educational- correctional home Krusevac". The rights and obligations of juveniles who are on the execution of educational measures in this institution are regulated, first and foremost, by the Ordinance on the house rules of the correctional facility in which there are provisions related to the working engagement of the minor. Under this Ordinance, a minor has the right and obligation to work in the facility. The Rulebook is clear, work of the juvenile in the facility is both a right and an obligation. The purpose of the work is that the juvenile acquires, maintains and increases his working skills, work habits and professional knowledge and earns a profit. The juvenile must be protected from economic exploitation and performing activities that could be dangerous to his health, physical, mental, moral and social development, as well as jobs that would interrupt his education. The important question that arises is the fact of whether the minor works in or outside the House. The answer to this question is also found in the House Rules. The work of a minor is organized and carried out in the home, home workshops, business units and outside the home within the local community. It is primarily performed in the House, but also exceptionally outside the Home. Considering the age of minors, and the fact that a certain number of juveniles attend classes, the working hours and working days are especially regulated. For minors who attend classes, working hours last up to four hours during a working day, and for minors who are not enrolled in classes - up to seven hours. Five days a week are working days, and Sunday is always a non-working day. Saturday, as a rule, is a non-working day. Exceptionally, Saturday may also be a working day, but then a juvenile who works on Saturdays is allowed the use of another free day. The Rulebook regulates the amount and intervals of payment of cash benefits. The juvenile is entitled to fee for work. The monthly amount of compensation for work can not be less than 20% of the lowest labor cost in the Republic of Serbia.

Payment of the fee for work is done once a week in the deposit. The highest amount of compensation for work and awards is determined by the director of the Management Board.

Conclusion

Although in most scientific and expert papers, it is quite justified that the persons deprived of their liberty are not obliged to work, we have seen, on the basis of the provisions of certain regulations, that persons deprived of their liberty have the duty to work. The working engagement of a person deprived of liberty differs from whether it is a convicted or detained person, a person who is serving a prison sentence in the penitentiary institution or in the premises where he or she resides. Also, the working engagement of persons deprived of their liberty varies depending on whether the sanction is carried out in a correctional facility in Valjevo or a education-correctional facility in Kruševac. It seems that on the basis of everything established in this paper, a general conclusion can be drawn, that is convicted persons who serve the prison sentence in penitentiary institutions and district prisons have the highest rights with regard to work engagement.

Nevertheless, it should be noted that although the normative framework for the work of prisoners in the penitentiary system is good for the Republic of Serbia, the practice has shown that there are numerous problems that need to be solved. As the greatest problem of the work of convicted persons, the impossibility of the management of penitentiary institutions to ensure the working engagement of persons convicted of certain criminal sanctions. The ways of overcoming this problem will be the subject of an analysis of a special scientific article.

LITERATURE

- Observation (CEACR) - adopted 2001, published 90th ILC session (2002), from
http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13_100_COMMENT_ID:2198997, April 21, 2014
- Criminal Code, Official Gazette of RS, no. 85/2005, 88/2005 - ispr., 107/2005 - ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014 and 94/2016
- M., Jelić et al, How to European Standards - Prisons in Serbia 2002-2003, Helsinki Committee for Human Rights in Serbia, Belgrade, 2003, 40.
- Ordinance on house rules in penal and correctional institutions and district prisons, Official Gazette of RS, no. 110/2014 and no. 79/2016
- Workers of the Penitentiary of Niš who reported abuses and corruption "suffer from scourging",
<http://www.transparentnost.org.rs/index.php?view=details&id=1076%3Ame>

- dia-ofcollection&option=com_eventlist&Itemid=6&lang=en, November 29, 2013
- A set of minimum rules on the treatment of prisoners,
<http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/02/Skup-minimalnih-pravila-o-postupanju-sa-zatvorenicima.pdf>, June 10, 2017
- Slobodanka Konstantinovic Vilic, Vojislav Djurdjic, Nevena Petrusic, Correctional Institution in Nis - 90 years, Prosвета, Nis, 2001, 99.
- Slobodanka Konstantinović Vilic, Miomira Kostić, Penology, Center for Publications of the Law Faculty in Nis, Nis 2011, 163.
- Constitution of the Republic of Serbia, Official Gazette of RS, no. 98/2006
- Rules of the prisoners work, Official Gazette of the Republic of Serbia, no. 145/2014
- Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules,
<http://pjpeu.coe.int/documents/3983922/6970334/CMRec+%282006%29+2+on+the+European+Prison+Rules.pdf> / e0c900b9-92cd-4dbc-b23e-d662a94f3a96, June 11, 2017.
- Security and Intelligence Services of the Republic of Serbia, Close,
[http://www.bezbednost.org/upload/document/\(15\)_unijat_2009_zatvori.pdf](http://www.bezbednost.org/upload/document/(15)_unijat_2009_zatvori.pdf), November 29, 2013
- Darko Dimovski, Private Prison, Collection of works of Faculty in Niš, Faculty of Law in Niš, Niš, 2014, no. 68, 559.
- Law on Execution of Criminal Sanctions, Official Gazette of RS, no. 55/2014
- Law on Juvenile Offenders and Criminal Protection of Juveniles. Official Gazette of RS, no. 85/2005
- Ivan Kuzminović, Ljiljana Palibrk, Prison System in Serbia, Helsinki Committee for Human Rights in Serbia, Belgrade, 2012, 9-10.
- Correctional Institution in Niš, <http://www.uiks.mpravde.gov.rs/lt/articles/ustanove-za-izvrsenje-krivicnih-sancija/kazneno-pravrvni-zavodi/zatvorenog-tipa/kazneno-pravrvni-year-to-not/>, November 27, 2013
- Penitentiary in Požarevac - Zabela,
<http://www.uiks.mpravde.gov.rs/lt/articles/ustanove-za-izvrsenje-krivicnih-sancija/kazneno-pravrvni-zavodi/strogo-zatvorenog-tipa/penitentiary-in-pozarevcu-zabeli/>, November 29, 2013