

CONVICT LABOUR AS A FORM OF CORRECTIONAL AND RESOCIALISATION TREATMENT

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Abstract

Convict labor is considered the primary and most effective form of correctional and resocialization treatment. The importance of convicts work as a form of treatment imposes the need for its further research in order to create optimal conditions for changing the behavior of convicts involved in the production of certain goods. In this paper, the authors will first focus on the stages in the historical development of convict labour. The second part of the paper presents the most important international documents related to the convict labour, with reference to different systems of convict work. In the third part, the authors analyze the normative solutions on convict labour in the Republic of Serbia, with reference to the situation in Serbian penitentiaries. Finally, the authors suggest how the application of this form of treatment may be improved in penitentiary institutions.

Keywords: *convict labour, treatment, resocialization.*

Introduction

Resocialization of convicts, as one of the goals of imprisonment, is conditioned by form of treatment applied in this process. Generally speaking, treatment is defined as a way of dealing with convicts. More specifically, it entails a complex system of institutional and non-institutional methods, measures and procedures, which influence the living conditions of convicted persons and change their personality, with the aim of their resocialization. Observing treatment as a way of dealing with the criminal offenders, we may distinguish three stages of treatment: treatment in court, treatment in an institution, and post-penal treatment. These stages are interconnected by the same goal - the resocialization of the convicted offender (Konstantinović Vilić & Kostić, 2011, p. 163).

Analyzing the importance of these three stages of treatment, we can see that the treatment in the institution and the post-penal treatment are very important because the convict's behavior may change during their application. During the convict's stay in a penitentiary institution, there is a possibility of applying different forms of treatment: convict work, education and professional training, organization of convicts' free time, convict self-organization, individual work, group work, as well as occupational and work therapy. Convict labour is one of the most important and effective forms of forms of correctional and resocialization treatment.

1. Historical development of convict labour

In human history, there have been three major stages in the evolution of convict labor. In the first phase, convict labor was not considered a treatment but a punishment. In ancient times, the work of convicts was used as an instrument of coercion and repression. This type of convict work was characterized by cruelty, degrading treatment and working conditions, where convicts did not receive any benefits for their work. In some cases, their work was futile. For example, in ancient Rome and Egypt, convicted persons became slaves who built aqueducts, public roads, fortifications, etc. Similarly, in ancient Greece, they worked as slaves on the construction of fortifications, in state mines, rowed on galleys, etc. (Konstantinović Vilić & Kostić, 2006, p. 161). In the Middle Ages, the concept of convict labour as a form of punishment prevailed; in addition to suffering, it was imbued with intimidation.

In the 16th century England, the prevalent idea was that convicts' work should have a preventive role, and contribute to developing convicts' work habits. Based on the initiative of the Protestant priests Ridley and Lever, this idea was put into effect in 1555 by establishing an institution in Bridewell near London, whose goal was to prevent the commission of criminal acts, to institute compulsory prisoners' work, and to try to re-educate inmates into useful members of society. In 1576, a law was passed that made it mandatory to establish such institutes throughout England. Since 1609, fines were prescribed for the counties that did not comply with the law (Dimovski, 2008, p. 257). One of the reasons for establishing Bridewell Prison was an attempt to resolve the problem of increasing crime rate. Namely, due to the rapid development of the textile industry, the land was taken from the peasants and turned into pastures; a large number of peasants wandered the streets in search of daily subsistence, engaging in petty crime, begging, prostitution and disturbance of public order and peace; it resulted in the increased number of committed criminal acts. They were the first convicts in Bridewell but, over time, other criminal offenders were confined to serve their sentences there. At first, different categories of prisoners were housed together; due to the absence of classification and any kind of joint work, there were numerous riots and disorder in prison. As a result, Bridewell instituted a basic classification into persons who were able and wanted to work, separating them from those who were able but did not want to work. The first group of prisoners was placed in the so-called workhouses, and the second one in correctional homes. The organization was soon followed by internal classification of inmates. The situation in Bridewell was best described by Max Greenheath in his work "Penal Reform" where he states: "These correctional homes provided the idlers and those who did not respect the law the opportunity to work. The purpose of their work was three-fold: to ensure self-subsistence to those who could work and support themselves; to re-educate them through discipline and compulsory labor; and to stimulate others not to indulge in vagrancy and idleness... Some convicts made suits, some worked in weaving and spinning mills, some worked in forges. Raw materials were supplied by private shop owners who collected the finished products and sold them on the market. The worst convicts were employed in mills and bakeries, with the possibility of being transferred to better and easier jobs... Later, the convicts were paid for their work (Konstantinović Vilić, Đurđić, & Petrušić, 2001, p. 5). For these reasons, Bridewell prison is considered to be the oldest prison which first introduced the "modern type" of preventive, correctional and resocialisation treatment of inmates.

The second phase in the development of convict labour in penitentiaries refers to the period of establishing a new type of criminal sanction - the penalty of deprivation of liberty. The new criminal legislation instituted during the French bourgeois revolution of 1789, embodied in the so-called *Code Penale*, promoted the principle of humanity by introducing the penalty of deprivation of liberty, where convicts' work was an instrument for aggravating their position in penitentiary institutions. In other words, the convicts' work had retributive features because the work was exhausting and convicts were not paid for it. However, the analysis of the classical penitentiary systems (the Pennsylvania system, the Auburn system,

the English system, the Irish system, the Maconochie system, and the Geneva system) shows that convicts' work was not considered in all these systems as a means of making the convicts' position more difficult.

In the Pennsylvanian system and the Auburn system, convict labor was not profitable because it was carried out in strict penitentiary environment where labor was perceived as a means of reinforcing the retributive nature of the punishment of deprivation of liberty. However, the English system, the Irish system and the Maconochie systems were exceptions because they perceived convicts' work as one of the conditions for advancement in their position within the penal institution. In the English system, for example, the convicts' good conduct and commitment to work were important factors for their progression from a strict to a more lenient regime of serving the prison sentence, which ultimately led to parole. Unlike the English system, the Irish system had an interim stage before granting parole to a person serving the sentence of imprisonment; it was known as the freemen's ward, where the inmates lived and worked on agricultural estates without guards and constant supervision, cultivating the land, raising livestock, etc. Essentially based on the conception that convicts progressively improve their position through their work and good conduct, the Maconochie "mark system" (Moore, 2011, p. 39) had three stages. The first phase was characterized by strict discipline. In the second phase, the convicts formed work groups. Generally, each group included five convicts, and the group members were chosen by inmates themselves. The group was awarded a mark (number of points) for task achievements, which were divided equally among the convicts. As the distribution of work within the groups was the decision of the group members, they were interested in doing their best because they earned more points. As the responsibility for successful work was transferred to group members, they had an interest in working as hard as possible but it also strengthened the feeling of solidarity between the group members. The work of each individual member of the group was reflected in the total number of points received by the group. The points they earned were partly used to pay for their food but they could be used for obtaining additional food supplies. Convicts earned extra points for overtime work. Disciplinary punishment could also be paid with points. In the last phase, the group was disbanded and each convict was assigned a hut with a plot of land on which he could engage in agriculture and raise poultry. Although the convict was free, he still had to work to earn points but he was allowed to engage in private work (Dimovski, 2008, pp. 267-275).

The last stage in the evolution of convict labour is related to the 20th century, when the convicts' work started being perceived as a means of resocialization and training for conformist conduct within the society at large. This conception of convict labour has been gradually recognized and accepted in a large number of legislations worldwide.

2. International documents on convicts' labour

Numerous international organizations have dealt with the position, rights and obligations of convicts, as well as various forms of convict treatment. One of them is the United Nations Organization, which discussed these issues at numerous congresses on crime prevention and treatment of prisoners. At the first UN congress, held in Geneva in 1955, the member states adopted the *Standard minimum rules for the treatment of prisoners (1955)*.

¹ The provisions on prisoner labor are envisaged in Articles 71-76 of this document.

Article 71 stipulates that prison labor must not be of a humiliating nature. All prisoners shall be required to work, taking into account their physical and mental abilities, as determined by a doctor. The

¹ UN (1955) Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977; https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf.

work must be meaningful and productive enough to employ them during the working hours. The purpose of the work is to preserve or increase the convicts' ability to earn an honest living after release. Useful professional education or vocational training should be provided to prisoners who may use it upon being released, especially young prisoners. Convicts shall have the opportunity to choose the type of work they wish to perform, within the limits of rational vocational selection, the needs of the institution administration, and prison discipline. Article 72 stipulates that the organization and work methods in penitentiary institutions should resemble as closely as possible the organization and work methods valid in outside institutions, in order to prepare prisoners for normal working life. The next paragraph explicitly prohibits subordinating the interests of convicts and their professional training to the acquisition of economic benefits from their work in penitentiary institutions.

Article 73 refers to the regulation of the management of industrial facilities and economies within penitentiary institutions. Thus, the industrial plants and farms within penitentiary institutions should be managed and operated directly by the administration of the penal institution and not by private entrepreneurs. In case prisoners are employed for work that is not under the control of the prison administration, their work shall always be supervised by the penal institution staff. If the work is performed in relation to jobs that are not under the control of the prison administration (unless the work is performed for other state institutions), the persons on whose account this work is performed shall pay the prison administration the full normal wages for such work, taking into account the performance of each prisoner. Article 74 refers to the precautionary measures aimed at the protecting the prisoner's occupational safety and health, and which are identical to the precautionary measures for workers at large. In case of accidents at work and occupational diseases, prisoners shall be provided relevant compensation for injury, loss or harm, under the same legal terms that are applicable to free workers.

Under Article 75, the maximum number of working hours per day and week shall be determined by law or administrative regulations, taking into account the local rules or customs applicable to free workers. When determining the number of working hours, the administration must leave one full day a week for rest and allocate sufficient time for educational/training and other activities aimed at prisoners' treatment, rehabilitation and resocialization. Article 76 envisages that prisoners shall be fairly remunerated for their work. They shall be allowed to use a portion of their earnings buy approved items for their personal use while they may send the other part of earnings to their family. Upon a prisoner's request, the administration may also set aside part of the earnings, with the aim of creating a savings fund, which shall be handed over to the prisoner on release (UN, Standard minimum rules for the treatment of prisoners, 1955).

The Council of Europe (CoE) is another international institution which dealt with the issue of convict labour and related rights. In 1973, the CoE passed a resolution called the European Prison Rules; the first revised version was adopted in 1987 but, in January 2006, the Council of Ministers considered it necessary to further revise these rules and adjust them to the changes in the penal policy, the execution of prison sentences and the management of penal institutions introduced in 2006. The work of convicts in prison is regulated by Article 26 of the European Prison Rules (Rec. (2006) 2),² which stipulates that this form of treatment shall be approached as a positive element of the prison house rules and shall never be used as a form of punishment. The prison administration has to ensure sufficient and beneficial work, which should be aimed at maintaining and increasing the prisoners' ability to earn and cover his living expenses after release. Article 26 (point 4) explicitly prohibits any form of gender discrimination in terms of the type of work. In case the chosen job requires vocational training, it will be provided for those convicts who can benefit from it, especially young prisoners. Prisoners may choose the type of job in which they wish to participate, in accordance with the available jobs, proper vocational selection and requirements of good conduct and discipline (Art. 26, points 5-6). The organization and methods of work in penitentiary institutions must resemble, as much as possible, those of similar jobs that exist in the social community in

² CoE (2006). European Prison Rules, Strasbourg: Council of Europe Publishing, <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>.

order to prepare convicts for the conditions of normal working life. The interests of convicts should not be subordinated to the financial gain from their activity in penitentiary institutions, although it can be important for raising standards and improving the quality and importance of training. Work for prisoners shall be provided by the prison authorities, either on their own or in co-operation with private contractors, inside or outside prison (Art. 26, points 7-9). At all levels, there must be fair compensation for convict labor. Convicts shall be allowed to spend a part of the work allowance on approved items for their own use, and to allocate part of the wages to their family. They may be also encouraged to save part of the wages, which will be handed over to them upon release from the penitentiary institution or they can use it for other approved purposes (Art. 26, points 10-12). Prison administration shall also ensure appropriate health care and occupational safety for convicts, which must not be of a lesser degree than the protection enjoyed by free workers. It is also important to provide adequate insurance against injuries at work, including occupational diseases, under conditions that must not be worse than those prescribed by national legislation for free workers (Art. 26, points 13-14). The number of working hours of convicts on a daily and weekly basis must be determined in compliance with national rules or customary hourly rates regulating the employment of free workers. Prisoners must have at least one rest day during the week, and enough time for education and other activities. As far as possible, prisoners who work shall be included in national social security systems (Art. 26, points 15-17).

3. Historical development of prisoner labour as a form of treatment in Serbia

The Republic of Serbia has a long history of passing laws in the field of criminal law. The Criminal Code of the Principality of Serbia from 1860 was one of the most important legal documents at that time (Konstantinović Vilić & Kostić, 2013, p. 10), and the first legal document which contained provisions on convicts' work in the articles referring to the types of punishment of deprivation of liberty. Generally, in the case of prison sentences for which such a penalty was provided, convicts' work was considered an addition to prison sentences. It may indicate its retributive character but one should be careful when drawing such a conclusion because the legislator did not take the same position on all forms of punishment of deprivation of liberty. For example, Article 14 prescribed long-term imprisonment, when the convict had to do hard work in the field or in the prison and wear light-weight or heavy-weight shackles on his feet, depending on the decision of the court. Article 14 § 2 stipulated that a woman sentenced to long-term imprisonment should do hard work only inside the prison, and should not be shackled. Persons sentenced to a term of imprisonment (1-5 years) were allowed to continue doing the jobs which they performed before being imprisoned, or which they would most expediently perform while serving the sentence. The court has the discretionary authority to exempt convicts of poor health from work, as well as those who would otherwise deserve it (Article 20 § 2). In contrast to long-term imprisonment and a term of prison sentence, there were no provisions on prisoner work or shackling in case of incarceration (1-20 years) (Nikolić, 1991, pp. 200-201). This legal text was valid by 1930, when the Criminal Code of the Kingdom of Yugoslavia came into force.

The Criminal Code of the Kingdom of Yugoslavia (1929)³ provided for several forms of imprisonment, such as long-term imprisonment, incarceration, rigorous imprisonment regime, and imprisonment. All these types of imprisonment they were executed on the basis of the principle embodied in the so-called of the Irish progressive system. Article Article 40§4 of the Criminal Code prescribed that every convict was obliged to work (Lazić, 1932, p. 83). The execution of various forms of imprisonment was regulated in Articles 36-38 of the Act on the Execution of Punishment of Imprisonment (1929).⁴

³ Krivični zakonik Kraljevine Jugoslavije (Criminal Code of the Kingdom of Yugoslavia), *Službene novine Kraljevine Jugoslavije*, br. 47, XXI-1929.

⁴ Zakon o izvršenju kazne lišenja slobode (Act on the Execution of Punishment of Imprisonment), *Službene novine Kraljevine Jugoslavije*, br. br. 47 XXI-1929.

Pursuant to Article 36 of this Act, the prison administration was obliged to take care of and supervise convicts' work. Prisoners were obliged to work, except for those who were considered unfit for work and exempted for medical reasons by a doctor. The elements of the Irish progressive system were reflected in the fact that convicts were classified into specific categories and kept in different wards; they were able to work both inside and outside the penal institution; in case they worked outside, they had to be kept apart from free workers. Convicted persons were also in charge of organizing and performing all household chores within the penitentiary. In the institution, convicts could be employed in those areas of work that were available in the institution, taking into account the convict's prior occupation, abilities health and future life at liberty. Older minors were given the opportunity to learn a useful craft, technical skill or, if possible, to develop skills in the previously performed jobs. The legislator stipulated that convicts' work did not entail competition with free workers and artisans; thus, it was necessary to divide the prisoner workforce into as many different industrial and agricultural jobs as possible, including: state-related work of public relevance, production of items needed by penitentiary institutions, state authorities and civil servants, etc. (Article 37) While prisoners generally worked for the benefit of the state, there was an exception; only in exceptional cases where there was no work inside the penitentiary and there was a shortage of workforce outside the institution, prisoners could be hired by private individuals. The wages were collected by the state; convicts were not entitled to received remuneration for their work but, depending on the type and quality of their work, they were granted a monetary reward. Recidivists were exempt from receiving this monetary reward for the first six months of their stay in the institution, while first-time offenders were exempt for a period three months. The awarded amount was initially small but it could gradually increase, in line with the convict's good conduct and the quality of work. The monetary award granted to the convict could not be taken away from the convict, nor could any payment be made thereof. The only exception was the rule on damage caused by convicts; thus, in case of damage caused to state-owned property either intentionally or by gross negligence, or in case of costs related to capturing and returning the prisoner who attempted to escape from the institution, the amount for incurred damage or costs would be compensated from the convict's monetary reward (Article 38).

The house rules determine which amount of the monetary reward the convicted person could use for the purpose of helping poor relatives, compensating the injured person, or spending on other useful things. That part of the monetary reward which was not spent by the convicted person while serving the sentence was kept on hold and handed over to the prisoner upon release. Working hours were prescribed on the basis of the house rules, which in our opinion is a bad solution. Convicts did not work on Sundays and holidays, and every prisoner was also exempt from work on the family saint's day, except for the obligation to complete household chores and other urgent or necessary tasks that could not be interrupted or postponed. The Minister of Justice was required to determine holidays for individual regions. We may reasonably raise the question of whether such a legal solution was adequate. Namely, due to the multi-ethnic structure of the state at that time, there was a possibility that a number of convicts who were members of one religion lived in areas predominantly inhabited by members of another denomination; on the other hand, there was also a possibility that a member of one religion from an area which is predominantly populated by citizens of the same religion would be sent to a penitentiary located in an area dominated by another denomination. In other words, the part related to individual regions should have been omitted from the legal text; the possibility for exempting members of certain religions from work during their holidays should have been determined on individual basis rather than on the basis of regions. Thus, Article 38 §3 could read: "Holidays will be determined by the Minister of Justice according to religion." Article 42 §2 provided for the prohibition of work hazardous to one's health.

In the Criminal Code of the Kingdom of Yugoslavia, the legislator accepted the Irish progressive penal system which entailed 4 stages in serving the sentence of imprisonment: cell-based regime (solitary confinement), common prison, freemen's ward, and release on parole. While serving long-term imprisonment, convicts had to do heavy work. While being confined to stay in cells, these prisoners had to do appropriate work. In case of incarceration, as a less severe punishment than imprisonment, convicts were

not required to do heavy work. In the phase of serving the sentence in common prison, the prison authorities organized joint work for prisoners serving the sentence of imprisonment and incarceration. If they were capable for hard work, the common prisoners could be used for work outside the institution, provided that their engagement did not entail a risk of escape or disorder, but in that case they were closely supervised by the prison guards (Article 23). This legal provision provided the opportunity for the state to employ convicts to build roads, railroads, drain swamps, etc. (Čubinski, 1930, p. 132). While serving the sentence of imprisonment in the freemen's ward, prisoners were mainly engaged in farming, breeding livestock and other agricultural areas, or (exceptionally) crafts and other jobs which were important for farmers, depending on individual circumstances (Article 24).

After the Second World War, the revolutionary government sought to change the normative framework in the newly formed state. The adoption of the Constitution of the Federal Peoples' Republic of Yugoslavia (FPRY) in 1946 created conditions for changing criminal legislation. The Criminal Code of the FPRY (general part)⁵ was adopted on 4 December 1947, where the legislator envisaged the punishment of imprisonment with forced labor, and the penalty of correctional labor. The sentence of imprisonment with forced labor could range from six months to a maximum of 20 years, but there was an exception to this rule. In case of the commission of criminal offenses punishable by death penalty, a sentence of imprisonment with forced labor for life could be imposed if the circumstances of the criminal offense and the personal characteristics of the perpetrator allowed for the mitigation of the prescribed sentence (Article 32). By analyzing this legal provision, we can conclude that prisoner work was intended to reinforce the retributive character of the punishment of imprisonment. In Article 34, the legislator envisaged the penalty of correctional labor, which could range from three days to a maximum of two years. If this penalty was imposed on a person unfit for work, the court could replace it with a fine (calculating 50 Dinars for one day of correctional labor). If the convicted person was unable to pay the fine, the court would replace the imposed sentence of correctional labor with a sentence of imprisonment (replacing three days of correctional labor with one day of imprisonment). Officers, non-commissioned officers, military officers, active-duty soldiers and police officers were exempt from being sentenced to correctional labor. Instead, they were sentenced to a term of imprisonment, by applying the calculation that was used in case of inability to pay a fine. The legislator also changed the provision on convicts' work in penitentiary institutions; thus, convict labour was perceived not only as an obligation but also as prisoners' right and duty (Article 83).

The Act on the Execution of Punishments (1948)⁶ included a special part on the execution of the punishment of imprisonment with forced labor. Article 30 of this Act prescribed that a convicted person serving a sentence of imprisonment with forced labor was obliged to do physical work of a more difficult nature as determined by the administration of the penal institution. A convict could be assigned to perform lighter physical tasks if he/she was considered to have been sufficiently re-educated while serving the sentence. Persons serving a sentence of imprisonment were not exempt from the obligation to work. In comparison with convicts' work in the sentence of imprisonment with forced labor, the prisoners' work in the sentence of imprisonment did not have a retributive character. A person sentenced to imprisonment was obliged to perform tasks determined by the prison administration, if he/she was fit for work. The convict's engagement in physical work depended on one's personal characteristics, professional training and ability to do physical work. Exceptionally, the Ministry of Internal Affairs could decide that the convicted person could perform other jobs (Article 31)., The working hours for both types of imprisonment were eight hours a day, with one day off during the week (Article 32). Convicts performed their obligations within work groups, under the control of prison administration officials. A convict placed in solitary confinement (cell) was required to perform his work duty individually. In Article 35, the legislator prescribed a monetary reward for achieving a certain norm in work. If a convict fulfilled his work obligation by working overtime, and the work was not imposed as a form of disciplinary punishment, or if his/her performance at work

⁵ Krivični zakonik (Criminal Code of the FPRY), *Službeni list FNRJ*, br. 106/1947.

⁶ Zakon o izvršenju kazni (Act on the Execution of Punishments), *Službeni list FNRJ*, br. 92/1948.

exceeded a certain norm, the prisoner was entitled to a monetary reward in compliance with the general legislation on wages for a specific type of work.

Article 33 of this Act included provisions on the work by convicted minors. The choice of work for convicted minors depended on the physical abilities, personal characteristics and inclination for a certain type of work, as well as the general plan for developing professional workforce. When determining the working hours for minors, it was necessary to take care that they had enough time to attend general education, vocational and technical schools.

In an endeavour to encourage economic development, the legislator provided that the convicts who excelled in rationalization, innovation or invention should receive special awards. In order to support such activities and encourage convicts to exceed the work norm, the legislator envisaged that such inmates could be located in special premises, where they would have the opportunity to enjoy better living conditions than others convicts and benefits (e.g. permits for more frequent visits, receipt of packages and correspondence) (Article 35).

Articles 40-55 of this Act regulated the execution of the penalty of correctional labor, which was performed in work groups, as determined by the state authority responsible for the execution of sentences. The penalty was executed outside the convict's place of residence. While serving this penalty, the convicted person was obliged to do the assigned work at a certain time, after which he was released (Article 40). As it was important to resolve the issue of convicts' accommodation while serving this sentence, convicts who served their sentences in work groups had to live in work colonies established for that purpose (Article 45).

In addition to serving the penalty of correctional labor in work groups, the sentence could be served individually as well. While the sentence of correctional labor was generally served outside the convicted offender's place of residence and in groups, there were several exceptions to that rule. The sentence of forced labor could be served in the convict's place of residence, as well as individually, in case the convict had been sentenced to correctional labor for less than three months, or in case the local economy had been deprived of necessary professional staff, which was obviously detrimental for the local economy. The last exception refers to the case where this type of punishment was imposed on a pregnant woman, a nursing woman or a single parent with small children (Article 41). Yet, a convicted person serving the sentence of correctional labor individually could be sent to a work group in case it was necessary to remove the person from the former environment, due to misconduct or lack of discipline at work, and to subject him/her to a stricter discipline regime in order to achieve the purpose of punishment. In addition to sending the convicted person to serve this sentence within a work group, the convicted person serving this sentence in a group could also be reassigned to serve it individually in case of establishing that the person had been re-educated and that individual work would achieve the purpose of punishment (Article 42).

Article 46 of this Act regulated the working hours of convicted persons sentenced to correctional labor, who had to work eight hours a day and were entitled to a day off, which was included in the sentence. The convicts received a monetary reward for their work while serving this sentence. Under the general legislation on wages for specific type of work, the monetary reward was awarded to convicts who worked overtime, whereby it was not the result of a disciplinary penalty, and to convicts whose performance exceeded a specific norm.

The new Criminal Code, adopted in 1951,⁷ regulated the subject matter of general and special criminal law. Article 24 of this Code prescribed the types of punishment, which *inter alia* included: the punishment of strict imprisonment and the punishment of imprisonment. Article 54 stipulated the obligation of persons sentenced to strict imprisonment or imprisonment to work (eight hours a day) while serving these sentences, if they were fit to work. Persons sentenced to strict imprisonment were assigned to do physical labor; if they were unable to perform such labour, they could be assigned to perform more suitable jobs. Unlike persons sentenced to a strict prison sentence, persons sentenced to a prison sentence were assigned to perform tasks that corresponded to their professional training and abilities. In case these persons were assigned to do

⁷ Krivični zakonik (Criminal Code FPRY), *Službeni list FNRJ*, br. 13/1951.

physical work, the assigned work (which did not correspond to their former occupation) had to be less demanding. Article 25 of this Code prescribed that persons sentenced to strict imprisonment and imprisonment were entitled to a day off per week, a monetary reward for good performance, and social insurance covering accidents at work.

A special chapter of this Code regulated criminal sanctions for minors. Referring to the execution of sentences of strict prison and imprisonment for minors, Article 77 prescribed that convicted minors should perform work in line with their physical abilities and inclinations for a certain type of work, with the aim of ensuring better training for work after serving the sentence. The working hours of minors had to be established by taking into account the time for attending general education, professional or vocational schools.

In the new Act on the Execution of Punishments, Security Measures and Educational Correctional Measures (1951),⁸ Chapter 3 focused on the rights and duties of convicted persons. Articles 38-40 of this Act regulated the work-related rights of convicted persons. In terms of work-related duties of convicted persons, Article 46 of this Act stipulated that convicts were obliged to work (8 hours a day), if they were able to work. The scope of convicts' overtime work was determined on the basis of general legislation. Convicts were entitled to have a day off work (for rest) per week, and every day they had the right to spend some time in the fresh air, outside the premises where they regularly stayed. As a rule, persons sentenced to prison were assigned to perform jobs that corresponded to their professional training. In case these persons were assigned to do physical work, the assigned work which did not correspond to their former occupation had to be less physically demanding (Article 47). The persons sentenced to strict imprisonment were, as a rule, assigned to do physical labor (Article 48). If the convicted person was incapable of doing physical work, he/she was obliged to do the work which he/she could perform. The work obligation was, as a rule, executed in a work group, under the control of an officer of the penitentiary institution who determined the schedule per group (Article 49).

In addition to the convicts' work-related duties, the legislator envisaged a number of work-related rights. Under Article 38, the convicted person was entitled to receive compensation for work aimed at attaining the prescribed work performance goals (work norm) for a certain type of work. In line with the general provisions on wages for a specific type of work, a convicted person was entitled to receive a monetary reward for overtime work, which was not the result of disciplinary penalty, and for work performance exceeding the specified work norm. The convicts who demonstrated rationalization, innovation or invention in their work were entitled to receive special awards. The convicts who excelled in their work by exceeding the prescribed work norm, rationalization, innovation or invention were entitled to receive benefits, if provided by the house rules, in line with the purpose of serving the sentence.

Article 39 regulated the earnings for convicts' work. According to the letter of the law, at least one third of the wages which the convict received for his/her work had to be kept by the administration of the penal institution as the convicts' personal savings, which were handed over to him/her upon release. According to the house rules, the convicted person could spend one third of earnings for personal needs. The convict could send the remaining part of the earnings and monetary reward to his/her family or another dependant person that he/she was obliged to support under the law (alimony or maintenance). In case the prisoner had no family, the money was kept as personal savings. Ten percent of the earnings that the convict received for his/her work was deducted for the benefit of the cultural and educational work fund in the penal institution and the support fund for released persons. Article 40 stipulated that the convicted person had the right to free health care and social insurance in case of an accident at work while serving the sentence.

The legislator's aspiration to promote convict labor as one of the most significant forms of treatment is evident in Chapter IV (Re-education measures) of this Act. Article 53 stipulated that the measures aimed at the convicts' re-education and resocialization were work in industrial enterprises, craft workshops,

⁸ Zakon o izvršenju kazni, mera bezbednosti i vaspitno popravnih mera (Act on the Execution of Punishments, Security measures and Correctional-educational measures), *Službeni list FNRJ*, br. 47/1951.

agricultural estates, and crafts training. The administration of each penitentiary institution was in charge of organizing such facilities and executing these measures. As a rule, convicts worked in industrial enterprises, craft workshops or agricultural economies on the premises of penitentiary institutions, but the legislator also envisaged the possibility of prisoners' work outside the institution. Convicted persons could only be employed in state and other social enterprises, or engaged in public works, only after they had previously spent at least three months in the institution in case of a prison sentence, or six months in case of a strict prison sentence. There was a ban on convicts' work for private individuals.

A special chapter of this Act related to convicted minors, who worked in industrial and craft workshops and agricultural economies organized on the penitentiary premises while serving their strict prison and regular prison sentences (Article 121). The jobs were selected on the basis of the convicted minors' physical abilities, personal characteristics, and affinities. The convicted minors worked shorter working hours, considering that time spent at school was counted as working time. Supervision of the minors' work was carried out by their educators (Article 123). The next chapter was devoted to the execution of educational measures. Although the legislator did not explicitly mention juvenile work as a form of treatment in terms of the execution of an educational measure of referral to an educational and correctional home, Article 129 stated that the manager of the educational and correctional home was in charge of managing and taking care of minors' work. Article 131 stipulated that the educational-correctional facility should provide training to convicted minors, for which purpose industrial and craft workshops were organized there. Article 132 stipulated that learning, training and work were the basis for the re-education of minors while serving their sentences, whereby they could work for a maximum of six hours a day, considering that time spent at school was included in the working hours.

In 1959, the Criminal Code was amended⁹, including the provisions on convicts' work. Article 54 of the amended CC stated that persons fit for work who had been sentenced to strict imprisonment or regular imprisonment would be employed to perform useful work in penal/correctional institutions. The type of work is determined by taking into account the convicts' physical and mental abilities, opportunities available at the penitentiary institution, and the discipline needs. The Code imposed limits on the length of convicts' work on a daily basis. The convicts were also entitled to an eight-hour uninterrupted rest period in a twenty-four-hour period, one day of rest during the week, and social insurance in the event of an accident at work. The convicts were entitled to receive compensation for their work in penitentiary institutions according to special regulations. As for the employment of minors sentenced to juvenile prison, the choice of work for convicted minors was made according to their abilities and preferences for a certain type of work, and in accordance with the possibilities available in the penitentiary. The working hours of minors were determined in such a way as to enable them to receive education and professional training, and to leave enough time for physical education and leisure.

Changes in substantive criminal law had to be accompanied by adequate changes in the criminal legislation on the execution of criminal sanctions. Article 16 of the Act on the Execution of Criminal Sanctions (1961)¹⁰ stipulated that convicts' work were obliged to work while serving their sentences. The convicts' work should be beneficial and correspond as closely as possible to the work of the same type at liberty. The purpose of the convict labour is to acquire or maintain and increase work ability, habits and professional knowledge, with the aim of facilitating their useful life in society. In order to achieve the proclaimed goal, various jobs were provided in penitentiary institutions, in line with the institution possibilities. The economic benefits should not have priority over the purpose of work as a form of treatment. Further provisions on convicts' work may be found in Chapter V (on the position of convicts) of this Act. Article 45 stipulated that the type of convict work was determined in accordance with the needs of their re-education, taking into account their physical and mental ability, the possibilities available in the

⁹ Zakon o izmenama i dopunama Krivičnog zakonika (Act amending the Criminal Code), *Službeni list FNRJ*, br.30/1959.

¹⁰ Zakon o izvršenju krivičnih sankcija (Act on the Execution of Criminal Sanctions), *Službeni list FNRJ*, br. 24/1961.

penitentiary institution, and the discipline needs, as well as the convicted person's desire to perform a certain type will be taken into account. Article 46 stipulated that the working hours of a convicted person could not be longer than the regular working hours prescribed for the corresponding type of work. The scope of overtime work should be determined in accordance with the general regulations on overtime work. Outside of working hours, a convicted person could be engaged for a maximum of 2 hours a day, in activities aimed at maintaining hygiene and ensuring normal life in a penitentiary. Convicted persons attending professional education/training classes could enjoy certain benefits, such as shortening the regular working hours, by decision of the competent state secretariat for internal affairs. Convicts were entitled to an 8-hour daily rest and a full day off per week. Convicts who continuously spent eleven months at regular work, including the time spent in treatment for work-related injuries or occupational diseases, had the right to a 14-day vacation. Article 49 stipulated that convicted persons were entitled to receive compensation for the work performed, amounting from 1/5th to 1/4th and exceptionally up to 1/3rd of the compensation paid for the same type of work and equal performance outside the penitentiary. The legislator found a way to stimulate convicts to work harder. In case of overtime work, convicted persons were entitled to receive the full amount of compensation. The rulebook on the execution of the sentence of imprisonment determined which part of the compensation the convicted person could freely dispose of, which part should be kept as savings, and which part could be used to support the family. As envisaged in Article 50, in case a convicted person did not work, and there was no fault on his/her part, he/she should be provided with the basic necessities. If a convicted person was unable to work due to illness, he/she should be entitled to half of the average monthly remuneration received in the last six months for regular work. However, the question arises what would happen if the convicted person did not spend six months at the same job before falling sick, but a shorter period of time. According to Article 50 § 2, the amount of compensation that the sick person would receive in such a case was impossible to determine.

Under the Constitution of the Socialist Federative Republic of Yugoslavia (SFRY, 1974), legislative power was transferred from the federation to the federal units (republics and provinces), which enacted their criminal laws and acts on the execution of criminal sanctions. The Criminal Code of the Socialist Republic of Serbia (SRS) and the Act on the Execution of Criminal Sanctions were adopted in 1977 (Dimovski, 2015, p. 162). The Criminal Code SRS (1977)¹¹ contained several provisions on convict labour. Article 38 § 2 stated that the choice of work for convicted minors should be based on their abilities and affinities for a specific type of work, taking into account the available institutional capacities. In establishing the working hours for minors, prison administration should take into account their education and vocational training, and provide sufficient time for physical and leisure activities (Article 38 § 3).

The Act on the Execution of Criminal Sanctions (1977)¹² regulated the work of convicts in detail. Article 9 prescribed the purpose of imprisonment, including among other things the work of the ex-convict, in accordance with the law. In the event that the convicted person was fit for work, he was obliged to work, and that work should be socially useful and correspond as much as possible to the modern way of production and organization of work. As noted, the purpose of work was the acquisition of skills or maintenance and increase of work ability, work habits and professional knowledge in order to integrate the inmate into societal life as easily as possible after release. In order to achieve this goal, convicts had to be provided the opportunity to perform a variety of occupations, depending on the available options at penal institutions (Article 15). However, the achievement of economic benefits from convicts' work should not prevail over the purpose (goals) of serving the prison sentence (Article 16).

Chapter V of this Act (the position of convicted persons) includes additional provisions on convict labour. Articles 117- 127 provide for a detailed standardization of the convict labour as a form of treatment. Thus, Article 117 stipulated that, in accordance with the re-education needs, discipline and opportunities

¹¹ Krivični zakon (Criminal Act SRS), *Službeni glasnik SRS*, br. 26/77, 28/77-ispr., 43/77-ispr., 20/79, 24/84, 39/86, 51/87, 6/89, 42/89, 21/90, i *Sl. glasnik RS*, br.16/90, 49/92, 23/93, 67/93, 47/94, 17/95, i 44/98.

¹² Zakon o izvršenju krivičnih sankcija (Act on the Execution of Criminal Sanctions), *Službeni glasnik SRS*, 26/1977.

available in a penitentiary institution, a convicted person was to be assigned the type of work by taking into account his/her psycho-physical abilities and affinities for performing specific type of work. Each penitentiary institution had to organize and manage a number of economic units where convicted persons would work. There was a possibility of employing a convicted person outside the penitentiary institution to perform work in the self-managing joint-labour organizations, other self-governing organizations and communities. The administration of the penal institution had to conclude a written contract with organizations and communities on the performance of such work, provided that the conditions for the execution of the prison sentence prescribed by this legal act were met (Article 118).

Article 119 prescribed the regular working hours of convicted persons, who were supposed to work 42 hours a week, but they could also work longer hours in cases and under conditions stipulated by law, such as maintaining cleanliness and performing other ongoing tasks necessary for life in the institution, whereby this additional work engagement of the convicted person could amount to an average of under two hours per day. The manager of the penal institutions (warden) had the authority to shorten the working hours of a convicted person in the event that he/she attended primary or secondary education classes.

A convicted person had the right to remuneration for his/her work. It was determined on the basis of the workplace requirements and work performance, but it could vary in the amount of 10% to 60% of the guaranteed personal income in the republic or the province. For work longer than full-time (42 hours), the remuneration was increased by 50% of the established remuneration amount. The manager (warden) of the penitentiary institution had the authority to issue regulatory acts on remuneration and monetary rewards for convicted persons with the consent of the republican or provincial secretary (Article 120). We may reasonably raise the question of expediency of such a solution. As each penitentiary institution may have a different regulation on remuneration and rewards for convicts' work, it may ultimately result in discrimination as convicts from different institutions could be paid different amounts for the same or similar work. Thus, it was necessary to resolve this issue at the level of the socialist republic, which would equalize the payment of remuneration and rewards for convicts' work. In Article 120 of this Act, the legislator also prescribed that a convict was not entitled to remuneration for work within the framework of occupational therapy during the execution of the safety measure of mandatory psychiatric treatment and custody in a health institution. In this way, the legislator made a distinction between work as a form of treatment and occupational therapy as a form of treatment. Occupational therapy is an activity of a simple, mechanical character, commonly used in the treatment of psychiatric patients, focusing on the benefits of inmates' work-related performance. However, the legislator missed the opportunity to address the shortcomings of occupational therapy which are reflected in neglecting the individual approach, inmates' affinities and abilities beyond exclusively physical activity, which must be beneficial. Therefore, it was necessary to introduce the so-called occupational therapy that would be applied during the execution of the security measure of mandatory psychiatric treatment and custody in a health institution. It would contribute to overcoming the shortcomings of occupational therapy by applying a higher-level therapeutic approach. In the implementation of occupational therapy, three principles should be adhered to: prisoner work must be rewarded, the social framework of occupational activity must be determined, and work must not be discriminatory (Konstantinović Vilić & Kostić, 2006, pp. 182-183).

In case a convicted person was temporarily unable to work due to illness, accident at work or occupational disease (without his/her fault), he/she was entitled to remuneration for work in the amount of one half of the average monthly remuneration that he/she earned in the last six months, or for the period he worked if it is shorter than six months (Article 121). By introducing the possibility of calculating the average monthly remuneration for a convicted person who worked for less than six months, the legislator removed the legal gap from Article 50 § 2 of the 1951 Act on the Execution of Criminal Sanctions. Article 122 of this Act prescribe how the convicts could dispose of the remuneration and monetary rewards received for their work, i.e. how much one could spend on personal needs and how much could be deposited as savings (30%), while the remaining amount could be freely dispose of. A convict who did not work due to illness or injury (without his/her fault), and had no financial means, was provided with the basic necessities (personal

hygiene items, correspondence, etc.) aimed for satisfying his/her subsistence needs (Article 123). Instead of explaining why their needs should be met, the legislator could have specified the convicts' needs.

Under Article 124, a convicted person was entitled to receive a monetary reward in case of exceptional conduct, commitment and performance at work. Thus, convicts were additionally stimulated to work hard and correct their behavior while serving the prison sentence. Convicts were also encouraged to make inventions and technical improvements, whereby they were entitled to additional rewards and benefits in compliance with general legislation (Article 125). For continuous work of 11 months, a convict was entitled to a continuous vacation period of 18 days during the year, which could be enjoyed in special rooms of the penitentiary institution. During this vacation period, the convicted person received remuneration for work in the amount of the average monthly remuneration earned during regular working hours in the last six months (Article 126). Article 127 shows the importance of convicts' safety at work, given that convicts working in prison workshops enjoyed the same kind of protection at work as free workers at liberty.

The convicts' position was additionally strengthened by the fact that he/she was insured in case of disability and physical injury caused by accident at work or occupational disease. In the event of a convict's death caused by an accident at work or occupational disease, the legislator took a step further by granting the convict's family members the right to a family pension (Article 134). This Act also included a special provision on convicted women during pregnancy, childbirth and maternity. In terms of leave from work, Article 133 § 1 prescribed that the general legislation should apply to female convicts during pregnancy, childbirth and maternity leave.

Chapter VIII of this Act, dealing with the execution of juvenile prison sentences, included only one provision on the work of convicted minors while serving their juvenile prison sentences. Article 182 stated that the type of work for a minor should be determined in line with the minor's psycho-physical abilities, personal characteristics and affinities to a specific kind of work.

4. Convict Labour as a form of treatment in the positive law of the Republic of Serbia

In 2005, the Republic of Serbia embarked on reforming the criminal legislation by adopting the new Criminal Code of the RS (2005), the Act on the Execution of Criminal Sanctions (2014), and the Act on Juvenile Offenders and Criminal-law Protection of Juveniles (2005). In this way, the Republic of Serbia accepted modern developments in criminal law theory.

The Criminal Code of the RS (2005) initially contained no provision on convicts' work but subsequent amendments to the Criminal Code introduced the punishment of work in the public interest (community service). Article 52 of the CC¹³ stipulates that this penalty may be imposed for criminal offenses punishable by imprisonment of up to three years or a fine. It may be imposed for a period ranging from 60 hours (per month) to a maximum of 360 hours, and executed within a period ranging from one month (a maximum of 60 hours) to six months. Community service entails any socially beneficial work (performed in the public interest) that does not offend human dignity and is not performed for profit-gaining purposes. When imposing this sentence, the court must take into account the type of criminal offense committed, the perpetrator's personality and willingness to perform work in the public interest, as well as the purpose of punishment. This type of punishment cannot be imposed without the consent of the offender. In case the offender fails to perform a number of hours of community service, the court shall replace this penalty by a term of imprisonment by calculating 8 hours of community service as one day of imprisonment (Article 52 § 1-5 CC).

The Act on the Execution of Criminal Sanctions (hereinafter: the ECS Act) of 2014¹⁴ contains detailed provisions on the manner of execution of criminal sanctions. Article 98 of the ECS Act (on convicts' work-related right) prescribes that convicts' work is an integral part of the treatment program. Thus, the convicted

¹³ Krivični zakonik (Criminal Code), *Službeni glasnik RS*, br. 85/2005, 88/2005-ispr., 107/2005-ispr., 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016, i 35/2019.

¹⁴ Zakon o izvršenju krivičnih sankcija (Act on the Execution of Criminal Sanctions), *Službeni glasnik RS*, br. 55/2014.

person is obliged to perform the assigned tasks and work obligations within the implementation of the treatment program. The work is aimed at ensuring that the convicts acquire, maintain and increase their work skills, work habits and professional knowledge in order to create conditions for their successful resocialization. Article 99 (purpose of convicts' work) specifies that the convicts' work must be purposeful and must not be humiliating. The economic benefit from convicts' work shall not prevail over or undermine the ultimate purpose of convicts' work. Notably, referring to the titles and content of these two articles, we may observe that the purpose of convicts labour was prescribed in two articles (Article 98 § 2 and Article 99), which is probably a nomotechnical error that has to be rectified. Article 99 should be renamed because the name of the article does not reflect its content.

Article 100 of the ECS Act envisages that the type of work shall be determined on the basis of the convict's mental and physical abilities, professional qualifications, affinities and expressed preferences, as well as the work options available at the penitentiary. The convict's mental and physical abilities for work shall be assessed by the institution's expert team. Article 101 refers to terms of employment of convicted persons, who may be employed both inside and outside the penitentiary institution. In order to prepare prisoners for life at liberty, the organization and management of prisoners' work in the institution should be as similar as possible to the work organization and management outside the penitentiary. If convicted persons work outside the institution, the institution is entitled to seek the market price as remuneration for their work.

Article 102 of the ECS Act provides the possibility for an offender sentenced to a short-term imprisonment (up to 6 months) for the first time to continue working at the workplace where he was employed at the time of receiving the order for the execution of the sentence. The director of the Administration for the Execution of Criminal Sanctions (at the Ministry of Justice) shall assess the convict's request and approve it if there are justified reasons and if the offence for which he/she was convicted is not related to those jobs. The convict has the right to file a petition to the judge who issued the decision on the execution of the criminal sanction.

Article 103 of the ECS Act regulates the working hours of convicted persons, who can work for up to 40 hours a week but, exceptionally, they may work longer hours, in line with the conditions specified by law. In addition to these working hours, a convict may work for a maximum of 2 hours a day, performing cleaning tasks and other ongoing tasks in the institution. If a convict attends general or professional/vocational education classes, the working hours shall be proportionally reduced. Article 104 prescribes that the convict's work is not included in the insurance period. However, in accordance with the regulations on the conditions for professional qualification, in case where only time spent at work is recognized as a condition for acquiring a professional qualification, the work time spent performing the same type of work while serving a prison sentence is recognized for that type of qualification.

Article 105 of the ECS Act provides that convicts are entitled to remuneration for their work, which is paid once a month. Remuneration amounts to at least 20% of the lowest price of work in the Republic of Serbia, while it is increased by 50% for overtime work (over the 42-hour full-time work). No taxes or contributions are paid on the remuneration for convicts' work. As prescribed in Article 106, convicts may receive additional monetary reward for performance at work, which is granted by the manager (warden) of the penal institution. The director of the Administration for the Execution of Criminal Sanctions is responsible for determining the maximum amount of remuneration and monetary reward for convicts' work. The convicted person may freely dispose of the remuneration and monetary reward for work, a certain percentage of which may also be allocated as savings (Article 107 ECS Act).

In accordance with the law governing protection at work, convicted persons enjoy the same kind of protection at work as free workers. Based on the law governing health insurance, a convicted person who is temporarily unable to work due to illness or injury (without his/her fault) has the right to compensation. If a convicted person does not work (without his/her fault) and has no financial means, the penitentiary institution is obliged to meet the most necessary needs and provide the basic necessities for subsistence (Article 108). Based on the law regulating the rights arising from the employment relationship, the convicted

person has the right to daily, weekly and annual leave. The annual leave may be enjoyed in the special premises at the penal institution. In order to ensure the financial stability of convicts during the annual leave period when they are not working, the legislator prescribes that convicts shall receive the same remuneration for work as if he were working (Article 109). The legislator also prescribes that a convicted woman is entitled to a pregnancy, childbirth and maternity leave in accordance with the law governing employment-related rights (Article 110 of the ECS Act).

The enforcement of criminal sanctions against minors is regulated by the Act on Juvenile Criminal Offenders and Criminal-law Protection of Juveniles (2005),¹⁵ hereinafter: The Juvenile Justice Act (JJ Act). Very few provisions of the JJ Act refer to work as a form of treatment of juvenile offenders. Article 128 of the JJ Act specifies the rights that a minor enjoys during the execution of the institutional measure of referral to an educational and correctional facility. It prescribes that a minor may work in the facility in line with his/her capabilities and the obligation to attend primary/secondary school classes. In case a minor does not attend classes, working hours are subject to general legal provisions. A minor may work overtime for a maximum of 2 hours a day, when the work entails cleaning tasks and other ongoing work in the facility. Article 128 also envisages remuneration for minors' work and monetary rewards for special work performance, the lowest and highest amounts of which are determined by the director of the Administration for the Execution of Institutional Sanctions. The minor may freely dispose of half of the remuneration for work and monetary reward for extraordinary work performance freely available to the minor, while the remaining half is put aside as savings; exceptionally, upon the minor's request, the facility manager may approve the use of the entire sum for justified reasons. On the basis of his/her commitment to work and good conduct, a minor may also earn a number of benefits which are granted by the manager of the correctional facility.

The Juvenile Justice Act also contains provisions on the execution of the juvenile prison sentence. Article 138 of the JJ Act stipulates that, while serving a juvenile prison sentence, convicted minors shall be provided with relevant educational, professional and vocational training which may be useful for their prospective employment, in line with their abilities, affinities and previous schooling, and shall receive appropriate remuneration for their work. When determining the working hours of a minor sentenced to juvenile prison, the facility officials should take into account the time for minors' education and professional training, and ensure sufficient time for their physical activities, cultural and artistic activities, performing religious ceremonies, entertainment and leisure (Article 141 JJ Act).

In addition to the previously presented legislative acts, convict labour as a form of correctional treatment is also regulated in the Rulebook on House Rules in Penitentiary and Correctional Institutions and District Prisons.¹⁶ Article 41 of this Rulebook envisages that convicted persons' work is an integral part of their treatment program. The purpose of their work is to acquire, maintain and increase the working ability, work habits and professional knowledge which would facilitate his/her successful reintegration in the society. Convict's professional development and vocational training include both theoretical preparation and practical training, in line with the opportunities and facilities available at the penitentiary or correctional facility.

5. Convict labour: the situation in penitentiary institutions in the Republic of Serbia

Convict labour as a form of treatment requires a detailed analysis of a range of circumstances in individual penitentiary institutions. In order to address this issue and examine the practical application of this form of treatment, we briefly examine the situation at the penitentiary institutions in Niš and Požarevac.

¹⁵ Zakon o maloletnim učiniocima krivičnih dela i krivičnopravnoj zaštiti maloletnih lica (Juvenile Justice Act), *Službeni glasnik RS*, br. 85/2005.

¹⁶ Pravilnik o kućnom redu u kazneno-popravnim zavodima i okružnim zatvorima (Rulebook on House Rules in penitentiary and correctional institutions and district prisons), *Službeni glasnik RS*, br. 110/2014 i br. 79/2016.

The Penal-correctional institution in Niš houses the industrial facility "Deligrad", which is used as part of the training and employment service. The data provided by the Administration for the Execution of Criminal Sanctions show that this industrial facility operates in several sectors: metal industry (production of household appliances), wood industry (production of beds, construction carpentry, chess sets, etc.), agriculture (various agricultural activities), catering (Motel "Deligrad" and the Jastrebac resort), technical services, construction sector, transportation sector, and special-purpose industry (Ministry of Justice RS, 2013). In the 1980s, the industrial facility produced 1212 types of boilers of different capacity for floor heating, which illustrates its importance for Yugoslav industrial production (Konstantinović Vilić, Đurđić, & Petrušić, 2001, p. 99). The transition to a market system economy, civil wars in the region and economic sanctions against Serbia had a significant impact on decreased production in this facility. Due to outdated work technology and wear and tear of machines, production lost its economic function (Human Rights Center, 2013). Although a large number of convicts meet the conditions to work, only a quarter of them work, and the management does not observe their preferences in the choice of jobs. The Penitentiary does not have a sufficient amount of repro material (Jelić & et al, 2003, p. 40). Thus, as reported by the media, the contracted arrangements with the companies *Magnohrom* and *Farmak* were cancelled (Danas, 2012).

The situation is quite similar in the industrial facility "Preporod" in the Zabela Penitentiary in Požarevac. The data provided by the Administration for the Execution of Criminal Sanctions show that the industrial facility operates in several sectors: metal, wood and agricultural sector, "Zvezda" livestock production unit, "Letnjikovac" unit with a pig and cattle farm, and catering unit with the restaurant "Preporod" (Ministry of Justice RS, 2013). During the 1980s, the Zabela Penitentiary produced over 30,000 stoves, which were sold throughout the SFRY. With the collapse of socialist Yugoslavia, there was no common market for this type of production. To improve the situation, there was a proposals to produce park benches but the major problem was the lack of material which prevented continuous production.

The Act on the Execution of Criminal Sanctions (Article 86) and the Rulebook on house rules in penitentiaries (Articles 45 and 56) stipulate that convict labour is an integral part of correctional treatment, whose ultimate goal is to acquire, maintain and increase the convict's work abilities, work habits and professional knowledge for prospective employment and reintegration in the society. Thus, by failing to ensure the work process for convicts, the Republic of Serbia violates convicts' rights (Dimovski, 2014, p. 559). Convict labor is considered the primary and most effective form of treatment because it is a prerequisite for the convicts employment after release, which significantly prevents recidivism (Konstantinović Vilić & Kostić, 2011, p. 167).

One of the solutions to improve convicts' work as a form of treatment is to allow private companies to manage industrial units within penitentiary institutions, but it requires the adoption of an appropriate legal framework. The Act on Execution of Criminal Sanctions specifies that the economic benefit from the convicts' work must not prevail over or undermine the purpose of that work within the penal system. Moreover, convicts' work is their right, not an obligation. Thus, starting from the fact that the goal of private companies is to make a profit, it is necessary to find a balance between the profit-making goals and achieving the purpose of convict labour, aimed at ensuring that convicts acquire, maintain and increase their work skills, work habits and professional knowledge. In other words, by applying modern penological measures, convicts should be encouraged to start thinking about their work engagement which essentially contributes to their re-education, change, employability and reintegration in the society after leaving the penitentiary. Given the fact that Article 26 of the Constitution of the Republic of Serbia (2006)¹⁷ prohibits forced labor, the convicts' voluntary work engagement while serving their sentences would contribute to resolving the problem of mandatory work in penitentiary institutions.

Article 2 of Forced Labour Convention (1930) of the International Labor Organization (International Labor Organization, 1930) stipulates that forced labor implies any form of involuntary work or service which a person is required to perform under a threat of penalty (Article 2 §1), but it does not include any

¹⁷ Ustav Republike Srbije (Constitution of the RS), *Službeni glasnik RS*, br. 98/2006.

work or service that a person is required to perform "as a result of a conviction declared by a court of law, provided that said work or service is performed under supervision and control of the public authority and that the said person is not hired or placed at the disposal of private individuals, companies or associations" (Article 2 § 2c) (Dimovski, 2014, p. 560). Referring to Article 2 of the Convention, the ILO Committee of Experts pointed to its prior observations on the privatization of prisons and convicts' work in private prisons, emphasizing that the state should ensure that prisoners voluntarily consented to work in private industrial facilities and were guaranteed wages and working conditions "approximating a free employment relationship" (International Labour Organization, 2001).

Conclusion

The presented situation pertaining to convict labor as a form of treatment in penal and correctional institution in the Republic of Serbia shows that there is a lot of room for improvement. Currently, the Serbian penitentiary system in costs 60 million Euros per year. One of the ways to improve the current situation may be more substantial funding, but Serbia already invests additional funds in the implementation of this form of treatment. Due to the ongoing economic crisis, no significant changes are likely to take place in this regard.

In addition to providing more substantial funding for penitentiaries, changes regarding convicts' work of may be observed in some countries where private companies are allowed to manage industrial/economic facilities within penitentiary institutions. In the Republic of Serbia, making such a decision would requires identifying all the dangers and shortcomings of such a system. The greatest danger is reflected in the fact that private companies abuse the work of convicts, with the aim of achieving the greatest possible economic profit. However, the benefits of private company management of industrial facilities in penitentiary institutions may be much greater. If private companies were allowed to manage economic facilities in penitentiary institutions, it would be necessary to institute close supervision within each penitentiary institution, aimed at controlling and preventing the misuse or abuse of convicts' work for the economic benefit of private companies. The representatives of the Administration for the Execution of Criminal Sanctions should be obliged to perform regular and extraordinary control in order to be directly informed about the implementation of this form of treatment. Prisoners should be engaged to work in the facilities managed by a private company only on a voluntary basis. Most importantly, in order to ensure the protect and exercise of their prisoners' work-related rights, the legislator should envisage the prisoners' right to file complaints to the administration of the penitentiary institution as a first-instance instance body, and to file appeals to the Administration for the Execution of Criminal Sanctions as a second-instance body.

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