

## WORK IN PRISON

**“Work in prison”** is a subject that finds its place in international legislation and jurisprudence as an important element of the penitentiary system, since it is seen as beneficial in terms of rehabilitating prisoners and shows its positive effects not only in the penitentiary process but also in the post-release period.

From past to present, work of prisoners has been categorized with different types; as an obligation which the certain categories of prisoners (e.g. prisoners with short sentences) have been excluded from the obligation to work, as a right as well as the obligation, as a right but not an obligation (completely voluntary) etc.<sup>1</sup>

Today, the type of work still varies according to the domestic legislation of the countries. **But there is no regulation that prohibits “work in prison”. On the contrary, the importance and benefit of work is universally accepted.**

The purpose of work is stated by the Association for the Prevention of Torture (APT) as such: **Ensuring that detainees are engaged in purposeful work is important for the well-being of detainees and staff. Being locked in the cell for substantial periods of the day can be very damaging to detainees’ physical and mental health. Boredom and inactivity can also increase tensions in prisons and make detainees more likely to be disruptive. Although it has implications for staffing and the organisation of the prison, a regime of work and other constructive activity can thus help to reduce tensions and contribute to the smooth running of the institution. Remuneration gained through work also allows detainees to support their needs in detention.**

**Furthermore, the main purpose of prison work is to help detainees resettle in society and lead a law abiding life upon release. Having steady employment is recognized as one of the most important factors preventing reoffending, as it increases detainees’ sense of self-worth and helps them to support themselves and their families upon release.**<sup>2</sup>

### INTERNATIONAL LABOUR ORGANIZATION (ILO) CONVENTIONS

ILO states that: “ILO Forced Labour Conventions (Forced Labour Convention No.29, 1930 and The Abolition of Forced Labour Convention No. 105, 1957) do not prohibit the use of prison labour, but they do place clear restrictions on its use. Prison labour can only be imposed on a criminal convicted in a court of law. Detainees awaiting trial cannot be forced to work, nor can people who have been imprisoned as a result of a non-judicial decision. The work performed by prisoners must be done under the supervision of a public authority, and prisoners cannot be forced to work for private enterprises inside or outside the prison.”<sup>3</sup>

1. “Prison Labour”, United Nations Department of Economic and Social Affairs, New York, 1995, p. 1-2, [https://www.unodc.org/documents/congress/Previous\\_Congresses/Ist\\_Congress\\_1955/084\\_Prison\\_Labour.pdf](https://www.unodc.org/documents/congress/Previous_Congresses/Ist_Congress_1955/084_Prison_Labour.pdf)

2. <https://www.apr.ch/en/knowledge-hub/detention-focus-database/life-prison-regime-and-activities/work>

3. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_101171.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf)

Article 2 of Convention No. 29 describes five situations which constitute **exceptions to the “forced labour” definition**<sup>4</sup> under certain conditions and **“work in prison” is one of these exceptions.**<sup>5</sup>

**According to subparagraph (c) of the second paragraph of the Article 2 of Forced Labour Convention No. 29, the following conditions must be met in order for “work in prison” not to be forced labour**<sup>6</sup>:

- ▶ **There should be a person who has been found guilty of an offence**
- ▶ **The work should be supervised and controlled by a public authority.**
- ▶ **The prisoner shall not be hired to or placed at the disposal of private individuals, companies or associations.**

**ILO also emphasizes the importance of ensuring that “work in prison” is performed under conditions that approximate a “free labour relationship”. For ensuring that these recommendations are given**<sup>7</sup>:

1. Prisoners should enjoy the same occupational safety and health standards as free workers.
2. Prisoners should access to comparable wage levels and social security benefits.
3. Prisoners should be offered themselves voluntarily for work, without being subject to pressure or the threat of a penalty (e.g. the loss of rights or privileges within the prison). **Written consent to work by prisoner is recommended as one way for providing that.**



4. According to the first paragraph of the Article 2 of Forced Labour Convention No. 29; forced or compulsory labour shall mean all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily.

5. <https://www.ilo.org/global/topics/forced-labour/definition/lang--en/index.htm>

6. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_101171.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf)

7. [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_101171.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_101171.pdf)

## EUROPEAN CONVENTION ON HUMAN RIGHTS, 1950

As known, slavery and forced labour is prohibited by the European Convention on Human Rights on 1950. Nevertheless, according to subparagraph (c) of the third paragraph of the Article 4 of the Convention; the term “forced or compulsory labour” shall not include **“any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention.”**

To make more concrete, Case of Meier v. Switzerland<sup>8</sup> can be given as an example. European Court of Human Rights concluded it as follows; **“As regards the aim of the work imposed, the Court accepts the Government’s argument that the requirement for prisoners to continue working even after retirement age forms part of efforts to reduce the harmful impact of detention. It acknowledges that suitable and reasonable work may help to structure daily life and maintain an appropriate level of activity, both of which are important goals as regards the well-being of long-term prisoners.”**<sup>9</sup>

Within the circumstances of this case, being asked to work even after retirement age was not evaluated as a violation in terms of reducing the harmful effects of deprivation of liberty.<sup>10</sup>

Case of Droogenbroeck v. Belgium<sup>11</sup> is an another example. The Court concluded that it was an obligatory work but did not violate Article 4 and the Court put forth the view that **“the work required did not go beyond what is ‘ordinary’ since it was calculated to assist the applicant in reintegrating himself into society and had as its legal basis provisions which find an equivalent in certain other member States of the Council of Europe.”**<sup>12</sup>

## THE STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS (1955) UNITED NATIONS STANDARD MINIMUM RULES FOR THE TREATMENT OF PRISONERS-THE NELSON MANDELA RULES (2015)

The Standard Minimum Rules for the Treatment of Prisoners were adopted at the first United Nations Congress on Crime Prevention and Criminal Justice. The Rules “constitute the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners.”<sup>13</sup>

8. Please, see “Guide on Article 4 of the European Convention on Human Rights, Prohibition of Slavery and Forced Labour”, Council of Europe/ European Court of Human Rights, 2022, p.13; “In this case the applicant complained about the obligation on prisoners to perform work in prison after they had reached retirement age and while making the decision, the Court had regard to the aim of the work imposed, its nature, its extent and the manner in which it was to be performed.” [https://www.echr.coe.int/documents/guide\\_art\\_4\\_eng.pdf](https://www.echr.coe.int/documents/guide_art_4_eng.pdf)

9. Meier v. Switzerland, Application no. 10109/14, §73, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-160800%22%5D%7D>

10. David Harris, Michael O’Boyle, Colin Warbrick, Avrupa İnsan Hakları Sözleşmesi Hukuku, Trc. Mehveş Bingöllü Kılıcı, Ulaş Karan, İstanbul, Bilgi Üniversitesi Yayınları, 2021, p.271

11. Case is summarized on “Guide on Article 4 of the European Convention on Human Rights, p.12, as follows; “For example, when the Court had to consider work a recidivist prisoner was required to perform, his release being conditional on accumulating a certain amount of savings, while accepting that the work at issue was obligatory, the Court found no violation of Article 4 of the Convention on the ground that the requirements of Article 4 § 3 (a) were met. In the Court’s view the work required did not go beyond what is “ordinary” in this context since it was calculated to assist him in reintegrating himself into society and had as its legal basis provisions which find an equivalent in certain other member States of the Council of Europe.”

12. Van Droogenbroeck v. Belgium, Application no. 7906/77, § 59, <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-57471%22%5D%7D>

13. [https://www.un.org/en/events/mandeladay/mandela\\_rules.shtml](https://www.un.org/en/events/mandeladay/mandela_rules.shtml)

The Standard Minimum Rules have had big influence in the development of prison laws, policies and practices in Member States all over the world.<sup>14</sup> The Rules have also been used as reference by European Court of Human Rights.

**The Standards which titled as “Work” were determined on Article 71. In compliance with this Article, the Nelson Mandela Rules<sup>15</sup> regarding the issue of “Work” can be summarized as:**

- ▶ Sentenced prisoners shall have the opportunity to work and/or to actively participate in their rehabilitation. Sufficient work shall be provided which keep prisoners actively employed for a normal working day. (Rule 96)
- ▶ Prison labour must not be of an afflictive nature. It shall not be held in slavery or servitude. (Rule 97)
- ▶ Ability to earn an honest living after release, vocational training in useful trades, ability to choose the type of work they wish to perform should be provided. (Rule 98)
- ▶ Work as closely as possible those of similar work outside of prisons should be provided. (Rule 99)
- ▶ Preferably, institutional industries and farms should be operated directly by the prison administration and not by private contractors. Where prisoners are employed in work not controlled by the prison administration, they shall always be under the supervision of prison staff. (Rule 100)
- ▶ The precautions to protect the safety and health for free workers shall be equally observed in prisons. Provision shall be made to indemnify prisoners against injury situations. (Rule 101)
- ▶ The maximum daily and weekly working hours of the prisoners shall be fixed. One rest day a week and sufficient time for education and other activities shall be fixed. (Rule 102)
- ▶ There shall be a system of equitable remuneration of the work of prisoners. Prisoners shall be allowed to spend at least a part of their earnings on approved articles for their own use and to send a part of their earnings to their family. (Rule 103)

**Also, compliant with these Rules and in addition, Association for the Prevention of Torture states that<sup>16</sup>:**

- ▶ Individualized skills and training for prisoners,
  - ▶ Medical check-up which should always be done conducted in the interest of prisoner and for pronouncing prisoners mentally and physically fit to work,
  - ▶ Normal working life which includes considerations such as working hours, health and safety considerations, retirement, remuneration and including prisoners in the national social security system,
  - ▶ Safe working conditions which local laws and regulations on health and safety at work includes,
  - ▶ The maximum daily and weekly working hours fixed by law or regulation and balance with other activities,
  - ▶ Equitable remuneration,
  - ▶ Work that does not put financial profits of prison industries ahead of the interests of prisoners, if it is provided by private contractors work under the supervision of prison personnel,
  - ▶ The possibility for prisoners to work in the outside community,
  - ▶ Equal access to employment
- should be provided for work in prison.

14. [https://www.un.org/en/events/mandeladay/mandela\\_rules.shtml](https://www.un.org/en/events/mandeladay/mandela_rules.shtml)

15. [https://www.unodc.org/documents/justice-and-prison-reform/Nelson\\_Mandela\\_Rules-E-ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/Nelson_Mandela_Rules-E-ebook.pdf)

16. <https://www.apt.ch/en/knowledge-hub/detention-focus-database/life-prison-regime-and-activities/work>

## OFFICE OF THE UNITED NATIONS HIGH COMMISSIONER FOR HUMAN RIGHTS, BASIC PRINCIPLES FOR THE TREATMENT OF PRISONERS, 1990

According to the Principle 8 of United Nations Basic Principles for The Treatment of Prisoners<sup>17</sup> **Conditions shall be created enabling prisoners to undertake meaningful remunerated employment which will facilitate their reintegration into the country's labour market and permit them to contribute to their own financial support and to that of their families.**<sup>18</sup>

## EUROPEAN PRISON RULES, 2006

The European Prison Rules<sup>19</sup>, “developed by the Council of Europe, set out standards on the management of prisons and the treatment of people in prison. They apply in all 47 Council of Europe countries and provide critical guidance to prison staff on how to protect and safeguard the human rights of people in prison. The Rules provide detailed guidance on best practice in all areas of prison management, from admissions to release.”<sup>20</sup>

According to Rule 26.1 which can be considered as the fundamental Rule indicating the philosophy of prison work **Prison work shall be approached as a positive element of the prison regime and shall never be used as a punishment.**

The Rules (26.1-26.17), the Rule 100 titled “Work” and the Rule 105 titled “Work by sentenced prisoners” (105) were summarized generally in European Prison Rules Short Guide as below:

“Prison work must not be used as a punishment; it should be of a useful nature, provide fair payment, and include vocational training for those able to benefit from it. People should be given a degree of choice over the work they undertake and working standards (including maximum hours and health and safety precautions) must not be lower than they are outside of prison. The pursuit of financial profit must not be prioritized over the interests of people in prison. People in pre-trial detention may be allowed to work but must not be required to. Those sentenced who have not reached retirement age may be required to work<sup>21</sup>, subject to physical and mental fitness.”<sup>22</sup>

17. Adopted and proclaimed by General Assembly Resolution 45/111 of 14 December 1990

18. <https://www.ohchr.org/sites/default/files/basicprinciples.pdf>

19. <https://rm.coe.int/european-prison-rules-978-92-871-5982-3/16806ab9ae>

20. European Prison Rules Short Guide, Council of Europe, 2021, p.1, <https://rm.coe.int/pri-coe-short-guide-to-the-european-prison-rules/1680a60205>

21. This Rule took place in the applicant's submission in *Meier v. Switzerland* case. At *Meier v. Switzerland*, §79, this issue was concluded as; “The Court observes that Rule 105.2 of the 2006 European Prison Rules states that sentenced prisoners who have not reached the normal retirement age may be required to work, subject to their physical and mental fitness as determined by the medical practitioner. Although the aforementioned European Prison Rules do not have binding legal force, the Court has always attributed considerable importance to them in its case-law. In the case before it, it observes that the wording of Rule 105.2 is quite open and that it does not impose a uniform regime as regards the requirement for prisoners who have reached retirement age to work. In any event, the Court considers that this Rule should not necessarily be interpreted as completely prohibiting the member States from requiring prisoners who have reached retirement age to work.”

22. European Prison Rules Short Guide, p.7

## PRINCIPLES AND BEST PRACTICES ON THE PROTECTION OF PERSONS DEPRIVED OF LIBERTY IN THE AMERICAS, 2008

According to the Principle XIV of Principles and Best Practices on the Protection of Persons Deprived of Liberty in the Americas<sup>23</sup> titled “Work”;

**“All persons deprived of liberty shall have the right to work, to have effective opportunities of work, and to receive a fair and equitable remuneration, in accordance with their physical and mental capacities, in order to promote the reform, rehabilitation and social readaptation of convicted persons, to stimulate and encourage the culture of work, and to combat idleness in places of deprivation of liberty. Such labor shall never be of an afflictive nature. ... They shall also ensure the implementation of permanent, sufficient and suitable labor workshops while promoting the participation and the cooperation with society and private enterprises.”<sup>24</sup>**

## EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT’S STANDARDS (CPT)

Extract from the 2nd General Report of CPT<sup>25</sup>, Paragraph 47, under the title “Imprisonment” is as follows: **“A satisfactory programme of activities (work, education, sport, etc.) is of crucial importance for the well-being of prisoners. This holds true for all establishments, whether for sentenced prisoners or those awaiting trial. The CPT has observed that activities in many remand prisons are extremely limited. The organisation of regime activities in such establishments - which have a fairly rapid turnover of inmates - is not a straightforward matter. Clearly, there can be no question of individualised treatment programmes of the sort which might be aspired to in an establishment for sentenced prisoners. However, prisoners cannot simply be left to languish for weeks, possibly months, locked up in their cells, and this regardless of how good material conditions might be within the cells. The CPT considers that one should aim at ensuring that prisoners in remand establishments are able to spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature. Of course, regimes in establishments for sentenced prisoners should be even more favourable.”<sup>26</sup>**

Extract from the 10th General Report of CPT<sup>27</sup>, Paragraph 25, under the title “Women deprived of their liberty” is as follows: **“Women deprived of their liberty should enjoy access to meaningful activities (work, training, education, sport etc.) on an equal footing with their male counterparts. As the Committee mentioned in its last General Report, CPT delegations all too often encounter women inmates being offered activities which have been deemed ‘appropriate’ for them (such as sewing or handicrafts), whilst male prisoners are offered training of a far more vocational nature.**

**In the view of the CPT, such a discriminatory approach can only serve to reinforce outmoded stereotypes of the social role of women. Moreover, depending upon the circumstances, denying women equal access to regime activities could be qualified as degrading treatment.”<sup>28</sup>**

23. Approved by the Commission during its 131st regular period of sessions, held from March 3-14, 2008

24. <https://www.oas.org/en/iachr/mandate/Basics/principles-best-practices-protection-persons-deprived-liberty-america.pdf>

25. Published in 1992 [CPT/Inf (92) 3]

26. <https://rm.coe.int/16806ce96b>

27. Published in 2000 [CPT/Inf (2000) 13-part]

28. <https://rm.coe.int/16806cd381>

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