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"He who will not work shall not eat": The penalty of compulsory labour in early Soviet law and its impact upon other criminal legislations

Abstract

The paper aims at to be an appraisal of the role of Soviet punishment of compulsory labour as a model punishment for alternative sentencing in post-war communist countries in Central and Eastern Europe. The paper is intended to present the issue in a comparative context with stress upon Soviet criminal law system. It offers an in-depth study of the genesis of the punishment of corrective labour and axiological reasons that lead to its introduction. The second objective is to present the functioning of the punishment in the practice of Soviet penal system and the impact upon other socialist and non-socialist legislations.

Introduction

The introduction of compulsory labour as an innovative form of punishment was based upon Leninist doctrine and his views on a necessity of reforming the punishment system to fight with class enemies, especially speculators. The original aspect of the punishment is that the forced labour should not be applied in a form of a penitentiary treatment, but should be exercised at home. An introduction of the new punishment into a penal system was justified by the necessity of providing an alternative for imprisonment. In this way prison should be replaced, when possible, with correctional sanctions.

Compulsory labour served as a substitute for not only deprivation of liberty but also other penalties, especially fines. If a convict had not got sufficient financial means to pay a fine, he or she had a possibility to perform some work in the same domicile or continue his contemporary work with the deduction of the wages for the benefit of the state.

An idea of the punishment was revolutionary and contagious for legislations of other communist countries, where it was embraced, adopted and subsequently developed as a penalty of community service. Also West European countries, although lacking any socialist legislative influences, created a community service order. The penal construction of the punishment is to a large extent analogue.

In view of the Council of Europe community service is one of the most promising punishments in the penal systems of European countries. However, it is essential to assess in which normative form and to which extent it should be applicable. Experiences of imposing and implementing the penalty under Soviet law can give us necessary knowledge, which aspects in the legal concept of this punishment ought to be modified.

Work as a socio-philosophical foundation of corrective labour

One of the first principles of the Soviet Constitution declared that he who will not work shall not eat. In this principle Bolshevik leaders paraphrased not only an old Russian proverb, but also an even older Paulian precept: *Qui non lavorat non manducet*[2]. Nevertheless, it was a paradox that labour was apotheosised in early Soviet ideology, but simultaneously perceived as a sort of distress. From one point of view labour was regarded as a form of retribution, while from another it was praised as the foundation of the communist society.

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[2] Paul, *Second Epistle to the Thessalonians* 3:10.

It was noticed centuries ago that the obligation to work can be utilised for the purposes of particular penal policies. The Bible describes hard labour as one of the oldest punishments in the history of humanity, as when Cain commits fratricide out of jealousy, God punishes him with banishment and hard labour[3]. Working for the benefit of society in the places of confinement was used as a punishment commonly in ancient societies like Egypt, Babylon, Israel and Assyria[4].

Generally, labour was perceived by Marx rather positively as a necessary condition of workers' self-realisation than a form of emotional suffering. This rule applied, however, only to labour in a communist mode of production, deprived of the features of capitalism like alienation of work. As Fitzpatrick states, work allowed men to be remade, born anew. "Work under Soviet conditions was regarded as a transformative experience because it was collective and imbued with the sense of purpose. Under the old regime, work had been an exhausting, soul-destroying chore; under socialism, it was the thing that filled life with meaning[5]".

Nonetheless, even the Soviet work ethos and glorification of workers did not counteract acknowledging that labour can serve the purposes of criminal law. Despite enthusiastic approach to labour, Bolshevik leaders correctly recognised that it can be felt both as something pleasant or aversive. Although labour *per se* was not a penalty[6], obligation to perform it could be perceived as a means of discouragement for undertaking criminal behaviour. Consequently, if it could deter potential wrongdoers, it could constitute an element of an efficient criminal punishment and might well serve the function of crime control.

Early Bolshevik perceptions of criminal law as a background for introduction of corrective labour

Lenin always viewed law as an instrument for implementing revolutionary policies rather than as a value *per se.* Despite receiving legal education and briefly practising as an advocate, he never considered having laws as a necessity in a society. In his early views Lenin was a legal nihilist[7]. He believed that the will of a working class should not be limited by legal provisions. In his opinion law is characterised by insufficient flexibility and therefore is just an obstacle to the realisation of the common will[8]. Therefore as he argued, laws have only temporary validity in a period of transition and when law hinders the development of the revolution, it must be abolished or amended; it should "wither away"[9]. These views were consistent with Marxist vision of communist utopia, in which laws were perceived as an unnecessary relic.

Nevertheless, Lenin later adopted an instrumental view of law, stressing its subordinate status towards the will of the proletariat. Lenin believed that in transitory times it would be essential to establish a proletarian dictatorship and that a state coercive power should be used rather for the purpose of protecting the masses then state's elites. This line of thought was supplemented by the idea of revolutionary legality, according to which state was entitled to exercise its powers for the suppression of opponents' of proletariat[10]. Leninist ambition was to make the criminal law serve socialism. However, he never presented a clear vision as to what should be included in Soviet criminal law, or who and how should administer it[11]. Rather he accentuated simplicity and accessibility of law for the toiling classes in opposition to formality and remoteness of the

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3 *Genesis*, 4:12.

4 E. M. Peters: *Prison before Prison - Ancient and Medieval Worlds*, (w:) N. Morris, D. J. Rothman: *The Oxford History of Prison*, Oxford University Press 1995 pp. 3-4, J. Śliwowski: *Prawo karne*, PWN Warsaw 1979, p. 263.H. Allen, C. Simonsen, E. Latessa, *Corrections in America. An Introductio*n, Pearson Prentice Hall, New Jersey 2004 pp. 6-7.

5 Fitzpatrick (1999, p. 75).

6 Such views can be found in German criminal doctrine: Pfohl (1986, p. 9).

7 Lenin (1950, p. 11); Lityński (2007, pp. 116-117).

8 Walicki (1995, pp. 104-105).

9 Beirne, Hunt (1988, p. 575); Berman (1946-1947, p. 803); Friedmann (1953, pp. 87-92).

10 Friedmann (1953, p. 88).

11 Beirne, Hunt (1988, p. 100).

bourgeois system. To achieve these goals he decided not only on establishing the whole new criminal law system but also on the abolition of legal institutions.

On 7 December 1917 Decree about courts was enacted, according to which so called people's courts provided a substitute for tsarist courts that had been discarded. Procuracy and the bar were abolished. People's courts were the realisation in practice of the idea of greater citizen participation. The courts consisted of a professional judge and two lay assessors. Jurisdiction of the people's courts in criminal cases was limited only to sentences, where the maximum penalty was two years imprisonment[12]. Introduction of the people's courts was an experiment in the system and administration of justice, comparable to some extend only to revolutionary tribunals during the Paris commune (28 March 1871-28 May 1871) and during Russian Revolution in 1905[13].

From 1919 to 1922 formal institutions of criminal procedure, civil rights and guarantees like *nullum crimen sine lege* were rejected[14]. In Article 5 of Decree about courts written pre-revolutionary law was explicitly replaced with non-written law. From now on peoples' courts shall have been guided in their judgements by the tsarist law only insofar that have not been annulled by the revolution and are not contrary to revolutionary conscience and revolutionary legal consciousness[15]. At first, Soviet apparatus perceived codification of a criminal law as a useless effort and approved the way criminal justice was being administered[16]. They underlined the fact that in the first period after revolution, "the armed people themselves, without any regulations or codes, settled matters with their enemies[17]". In the absence of clear criminal law, many judges applied Tsarist criminal law (especially the Ulozhenie of 1845), despite clear disapproval of Bolsheviks. However, some decided arbitrarily, independently and often inconsistently. Therefore as early as in 1920 such a wide discretion for the newly appointed judges started to be seen as a threat, which led to initiation of the codification process[18]. The first RSFSR Criminal Code was enacted on 24 May 1922 and came into force on 1 July 1922. It was, however, subject to considerable amendments in subsequent years and was replaced by the Criminal Code of 1926— the one that lasted until 1960.

The wide judge discretion was not rejected by the drafters of the 1922 Criminal Code. Huge ranges of punishment in the progressive mode, and the right to sentence under the legal minimum indicate that judges were supposed to be leashed, but to large extent they remained freedom to judge on their own.

Some of the Soviet lawyers acknowledged revolution as liberation of the state coercion. They believed that the future socialist criminal code will not know the concept of punishment as a means of influence upon the criminal[19]. To some extent their idealistic desire was fulfilled. Under the influence of Italian positivists communists resigned upon using the notion of punishment. Instead the concept of punishment was replaced with the obscure idea of measures of social defence.

In the Article 5 of the Criminal Code of the Russian Federation adopted in 1922, the first Soviet penal code, it was declared that he purpose of the Code was the judicial defence of the state against crime and against socially dangerous elements by imposing punishment or taking other measures of social defence. The distinction between these notions was clear cut. The punishment was imposed for committing an offence, whereas according to the Article 7 of the Code the measures of social defence were taken in connection with activity of a great threat to public order[20].

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12 Kucherov (1970. pp. 23-35).

13 Smith (1996, pp. 29-30).

14 Filar (1992, p. 15).

15 Sójka-Zielińska (1995, p. 358).

16 Soviet lawyers believed that in communism there will be only non-written law as codifications are only passing phenomena on the way to socialism: Mohyluk (2008, p. 73); Lityński (2005, pp. 135-175); Solomon (1997, p. 12).

17 Official introduction to the statute „Leading Principles of the Criminal Law of S.S.S.R. 1918 as cited in: Starosolsky (1949-1950, p. 359).

18 Feldbrugge (1993, p. 201).

19 Smith (1996, p. 30).

20 Nikoforov (1960, p. 33).

In the period of time between coming into force of Fundamental Principles of USSR Criminal Code on 31 October 1924 and promulgating Judiciary Act of 1938 the notion of measures of social defence totally substituted using the word punishment[21]. The change was ideologically motivated and had purely of a terminological character. There can be no question that measures of social defence had penal character, and therefore should deliberately be referred to as punishments.

According to Filar, revolutionary criminal law was guided by moralist, educative and coercive paradigms. It was largely politicised. Its ambition was to quickly influence the masses in a spirit of internalisation of norms of the new Soviet society[22]. This ambition could be easily spotted in the context of the introduction of compulsory labour and its penal aims.

Compulsory labour: a cure-all to penitentiary crisis or a Pandora's box?

Because of the collapse of the tsarist legal institutions the crime rate drastically increased. The court statistics show that the number of robberies and murders in Moscow in 1918 was ten times higher than in 1913[23]. The most frequent crimes committed during war were property and economic crimes like theft, embezzlement, extortion and swindling. Murder, armed robbery and arson were ranked ninth, tenth and fifteenth in nineteen types of crime[24]. The need for handling the chaos and dealing foremost with petty offences was seen even by Bolshevik officials[25].

Nonetheless, in the very beginning of the revolutionary times Bolsheviks were enthusiastic about creating a criminal system that would be featured by rationality and leniency[26]. They remained under influence of progressive penology from Western Europe[27], as in the beginning of XX. century the sociological researches behind the prison gate were conducted and the phenomenon of revolving door or prison socialisation was duly described.

Therefore revolution leaders had a genuine desire to use confinement as a sentencing option in rare and ultimate cases[28]. Incarceration was to be the last arrow in the quiver of sanctions. The wish for introducing modest and sensible changes in the law clashed with the urgent need for efficient and stable crime policy and effective penal measures.

The idea of adopting the new form of sanctioning being a substitute to confinement was created by Lenin rather quickly. Lenin himself and other Bolshevik officials addressed *ad hoc* orders obliging recipients to perform some forms of mandatory labour while remaining at home [29]. Lenin described the theoretical foundation of the punishment in a little known publication entitled Summary of the Essence of the Section Concerning Punishments of the Judicial Point of the Party Programme of 1919. Lenin assumed that the basic punishment should be without deprivation of liberty and that it should consist of corrective labour on special public projects[30]. The primary premises were that the penalty was supposed to be applied foremost on the bourgeoisie and people accused of malicious infringements of the newly established social legal order like speculators and "millionaires-saboteurs"[31].

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21 This terminology was in use till the mid 1930's. As Beermann interprets it, by that time also republican criminal codes decided for re-introducing the notion of punishment. The last was Tadzhik Criminal Code that did it in 1935. With enacting Principles of Criminal Legislation of the USSR and the Union Republics the principles of social defence were ultimately rejected: Beermann (1985c, pp. 648-649).

22 Filar (1992, p. 16).

23 Smith (1996, p. 30).

24 Hasegawa (2004, pp. 47-48).

25 A trend of decriminalisation and diversion was duly described in: Solomon (1981 - 1982, pp. 9-44).

26 Solomon (1980, p. 195); Leniency shall be, however, shown only towards toiling social classes. As Lenin stated in *State and Revolution*, all counter-revolutionary elements were to be treated with merciless force and "iron hand": Smith (1996, p. 30).

27 Solomon (1996, p. 196).

28 Solomon (1996, p. 196).

29 Beermann (1985a, p. 200).

30 Lenin (1960, p. 85); as cited in: Conrad (1970, p. 157).

31 Beermann (1985a, p. 200).

The penal purposes that were determined in that way perfectly fitted communist rhetoric of class struggle and re-education of class enemies and their reintegration through labour into the Soviet society However, it was soon spotted that from the point of view of communist ideology this sort of punishment is maybe even more suitable for the toiling classes than it is for the bourgeoisie. On one hand, confining the proletariat as the most valuable social class in many cases equalled losing their work capacity and productive forces. On the other hand, providing alternative sanctioning for them was necessary for punishing petty offences. Imposing compulsory labour upon workers' was therefore justifiable from both socio-economical and penal viewpoint. Moreover, compulsory labour as an original Bolshevik invention was introduced into the already existing system of criminal sanctions for the purposes of practical realisation of ideologically influenced criminal policy, and also a rationalisation paradigm. For according to Buszujew, it was believed that such a penalty would not only be a substitute to confinement, but would successfully eliminate prison overcrowding and will help to overcome a penitentiary crisis[32].

Normative construction of the sanction

The penalty (*prinuditelnyi trud*) was legally introduced to the sanction catalogue on 19 December 1917 People's Commissariat of Justice chaired by Steinberg in the instruction entitled *"About revolutionary tribunal its composition matters belonging to its jurisdiction and proceedings in front of it"*[33]. It was later also legally enacted in the third Decree on courts on 20 July 1918[34]. Article 11 of this decree stated that compulsory labour shall replace short term deprivation of liberty. The basic legal contour of the sanction was further delineated in 1919 in Guiding principles of criminal law. In these Guiding principles the punishment was first unequivocally described as a separate penalty, which differed in character from other sanctions. Subsequently, it was reaffirmed in the criminal codes of the union republics, including RSFSR Criminal Code 1922 and 1926.

The punishment was introduced into criminal codifications also after World War II. It was included in Principles of Corrective Labour Legislation of the USSR and the Union Republics of July 1969. It found its place among sanctions enlisted in the RSFSR Code from 18 December 1970 and other corrective labour codes of the union republics.

The punishment has consisted in performing forced labour usually manual. Working has involved foremost physical effort and has not involved any particular skills or qualifications[35]. The offender was obliged to work diligently and for the amount of hours that was prescribed by court. In the RSFSR Criminal Code from 1926 the penalty could be imposed raging from one day to up to one year. The punishment had been executed by assigning tasks in another workplace that was, however, situated inside the district of the offenders domicile. The court had to specify reasons in the judgement, why it decided to use this version of penalty. If an offender already had a stable job, he could serve the penalty in his own workplace . However, if the court decided upon inflicting this version of compulsory labour, the convict could not change the place, in which the work was done. As a consequence, as long as employer could dismiss the offender or alter his work duties, generally the offender could not ask for dismissal himself. He could do it only after obtaining consent of the inspector supervising his work, what could take place in exceptional cases, for example after proving employer's abuses over employee. If the offender has remained in the same workplace, part of his salary was deduced for the benefit of state's budget. The partial deduction should be prescribed in a judgement. At some point this partial deduction could range from 25 up to 70%, but afterwards it was settled of maximum 20%[36]. The court could also decide upon assigning less responsible or demanding duties. If an offender was in a leading position, the court could state whether he could or could not any longer occupy this position. Even if the court did not prohibit

32 Buszujew (1968, pp. 3-4); as cited in: Śliwowski (1979, p. 11).
33 Filar (1992, p. 13).
34 Kucherov (1970. pp. 38-41).
35 Śliwowski (1979, p. 11).
36 Nikoforov (1960, p. 39).

holding it, it should send the text of the judgement to appropriate authorities, who could decide upon his dismissal. The same procedure was applied for the offenders that were elected for their positions[37].

The time that an offender spent on serving the sentence was not counted into the amount of years of work required to obtain pension rights, annual leave or other lobar benefits that were dependent upon work experience (such as right to additional days of vacation or allowances) If the convict had served half of his sentence and had shown a good conduct, he could be released on parole.[38]

According to the article 29 of RSFSR Criminal Code from 1926 an offender was arrested prior to sentencing to corrective labour, the term served in custody must have been deduced at the rate of one day custody for three day labour.[39]

The punishment was not inflicted on soldiers, instead the penalty of military arrest was used. This type of arrest was used for the time up to two months and its execution was secured with military disciplinary measures.

Pendulum swings: from oppressiveness to progressiveness and back

The idea of the new punishment was largely innovative. In early penitentiary facilities obligation to perform some sort of labour was always inseparably connected to detention[40]. Working was seen as a necessary but auxiliary component of a deprivation of liberty, not as the sole way to inflict some kind of pain upon a person for transgressing a law. Labour connected with deprivation of freedom was widely spread in the tsarist criminal system. Many variants of hard work belonged to traditional punishments in the tsarist era. However, while in Russian Empire convicts were mostly obliged to perform some form of hard work that served punitive and economical purposes, non-custodial compulsory labour stressed more on achieving aims of correctional and re-educative process.

Compulsory labour without confinement was revolutionary in penal policy, opening a new chapter in the history of corrections. From this moment on, the twofold system of sanctioning consisting of obligation to work was created: one with the domination of reforming elements and the other with the paradigms of isolation and repression. As Beermann states, this two-pronged system corresponded with the usage of double standards in sentencing according to the social class. Reform and social defence were applied to offenders from the workers' class, whereas repression and retribution were applied to perpetrators from bourgeoisie[41].

It must be, however, noticed that only compulsory labour exercised in workplace indicated for an offender by local governments in the USSR can be regarded as an original and progressive penalty. If a convict was supposed to work in his own workplace, the punishment equalled deduction of his salary. In these cases the sanction was in fact monetary in nature and similar, although not equivalent, to fine. In this form of punishment additional limitations to the sphere of personal liberty were of minor character. Convicts, whose wages were garnished, were supposed to be supervised by the labour collective. Nonetheless, considering the fact that he or she worked in the same work setting as usual this supervision was illusory or even non-existent.

Under the RSFSR Labour Code of 1924 a variety of institutions was set for custodial treatment, like detention houses, corrective work houses, labour colonies - agricultural, industrial and for craftsmen, isolators for special purposes, transitional correction workhouses[42]. All of the

37 Śliwowski (1979, p. 34).

38 Nikoforov (1960, p. 35).

39 Fincke (1985, pp. 58-59).

40 Allen, Simonsen, Latessa (2004, pp. 11-12).

41 Beermann (1985b, p. 568).

42 Under the RSFSR Labour Code of 1933 there was only one type of corrective isolatory institution: corrective labour colony. Three kinds of colonies were set up: industrial/manufacturing, agricultural and colonies for general unskilled workers. This system did not alter significantly after promulgating Principles of Corrective Labour Legislation

penitentiary institutions were with progressive stage system, which meant that the term of imprisonment was reduced for good behaviour of inmates. The penitentiary system was guided by Commissariat of Justice. Nonetheless, separately from this system a branch of labour camps was created, which was developed by the political police OGPU, and soon started to be a synonym of the terror era.

Compulsory labour remained in the conjunction with various forms of deprivation of liberty for centuries. This conjunction was broken by legislation from the period of the Russian Revolution but as one can see only partially. However, a newly introduced penalty *isprawitielnyje raboty* based upon the experiences of using obligation to perform some sort of labour for the penal purposes and developed them even further. Through elimination of the necessity of confinement it improved it and adjusted for the aim of proving intermediate sanctioning differing from the system of fines and penalties basing on imprisonment.

Compulsory labour consisted of retributive elements but at the same time of immanent element of re-education and social adaptation. In this sense it had an advantage over imprisonment as these elements must be gradually worked out in custodial penalties in the course of rehabilitation programmes. The idea was that punishment through work might help an offender to redefine his or her place in the society. It offered him a chance to undone the wrong done to the society and pushed towards constructive and positive changes. Compulsory labour was supposed to be seen as an *actus contrarius* to the committed crime[43]. Moreover, the punishment did not share the downsides of imprisonment like demoralisation by other prisoners, prison aggression, sexual frustration, emotional atrophy or social alienation.

Although the humanitarian aspects played an important role in the adoption of compulsory labour as a new punishment, it was the criminal policy that was decisive. Putting stress upon non-custodial sanctions served foremost practical reasons. It was important that petty offenders did not return as inmates, blocking prison places for serious criminals. Therefore, compulsory labour was believed to be a remedy to relieve the crisis of congestion in prison and counteract the phenomenon of recidivism.

Difficulties in implementation, experimental failure and shift in criminal policy

Compulsory labour was perceived as a characteristically Soviet punishment and caused an unprecedented turnover in criminal sentencing[44]. In the years 1928-1929 criminal policy shifted toward greater leniency, which was directly caused by constantly growing prison overcrowding. To prevent the catastrophe of congestion in prisons Bolshevik authorities gave instructions for judges to stop sentencing for any terms of imprisonment under one year and replace them with alternative sanctions, especially compulsory work.. Mere instructions turned out to be insufficient to cause significant changes in sentencing policy. Therefore later on assigning alternative sanctions was obligatory for petty offences.

Judges used the sanction of compulsory work foremost for offenders from toiling classes. It dominated sentencing in cases of hooliganism, ordinary theft and negligence. It was also believed to be the most appropriate penalty for peasants who violated grain contracts. However, compulsory work was assigned also for serious offences. Research showed that in 1932 every fourth murderer and every third sex offender was not imprisoned. The lenient penal policy reached its apogee in 1930. At that time only a small percentage of 9,6% of convicts were sentenced to confinement and in most cases deprivation of liberty was awarded for no more than three years[45].

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of 1969: Beermann (1985b, pp. 568-569); also: Feldbrugge (1975, pp. 123-147); Colony (1977, pp. 345-346); Conrad (1970, p. 158).

[43] Kunz (1993, p. 13).

[44] Solomon (1996, p. 30).

[45] Solomon (1996, p. 222).

The generally minor character of the offences for which compulsory work was inflicted and the enormous number of convicts were reasons for a denial of a right of cassation appeal for all offenders convicted to less than three months compulsory work or a fine under 100 rubles[46].

Guidelines for the newly adopted criminal policy that accentuated replacing custodial sanctions with compulsory work contributed to the fact that in a Soviet criminal law system this penalty arose to the most popular criminal sanction. Statistics show that during the first years of NEP only every fifth person had not been sentenced to compulsory work. Generally while sentencing, judges perceived this sanction as most appropriate for petty offences, especially for the toiling classes.

The whole burden of an executing of a criminal sentence and organising places of work for convicts rested totally on local authorities. Not prepared for organising places of work for 80% of all convicts, local authorities often failed to accomplish this task properly. In times of an unemployment plague they were not able to supply enough productive work[47]. As a consequence, convicted workers and peasants were assigned with purposeless works or were not assigned with any job at all, which lead to the absolute failure to achieve assumed rehabilitation goals.

If a person sentenced to performing compulsory work was obliged to perform pointless activities, not only did it led to his or her lack of motivation, it led also to the distortion and revaluation of original objectives[48]. In some custodial sanctions convicts were often forced to do meaningless arduous labour, like carrying stones there and back[49]. However, the main goal of such activities was the constant keeping of discipline and increasing severity of the penalty and not rehabilitation as such. Not implementing a sanction, which the convict was sentenced for, had an even worse effect upon him from psychological point of view both as it undermined the very purpose of the sentencing process, strengthening the feeling of factual impunity and multiplying the recidivism rates.

Moreover, the assignment of corrective labour to young offenders was to a certain degree ineffective. After Stalin criminalised juvenile delinquency in 1935, the punishment could be used for minors, what made, little sense as they were often too young to hold jobs[50]. Although the punishment or other non-custodial sanctions, including several forms of suspended sentences, were still in use, 59,4% of juvenile delinquents between 16 and 17 years old were incarcerated and 53,5% of delinquents between 12 and `15.

Sanction of compulsory work was served without breach foremost exclusively by convicts who were already employed in a moment of conviction. For these people local authorities did not have to search another workplace as they served their sentences by working extra hours in the same workplace. However, performing non-paid labour by them raised important question, whether such a form of punishment is or is not in fact an undercover fine. In fact if a convict was sentenced for a monetary sanction, he or she also had to work overtime to pay it[51]. In the 1930s, when industrialization led to a version of full employment, the punishment exercised in form of deduction of wages still played important role, whereas the punishment exercised in form of obligation to perform non-paid work in another workplace was meaningless in practice. The reason is that judges were aware of the difficulties with sentence implementation and were resistant to the directive obliging them to use compulsory work in place of confinement. Disenchantment with the re-educative effects of compulsory labour caused returning to traditional custodial sanctioning. In the ensuing years also Bolshevik authorities realised that sentences for compulsory work were not being properly or at all implemented. When the penalty could not be served in the same workplace,

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46 Solomon (1996, p. p. 43).

47 The rise in unemployment in this period is estimated in: Siegelbaum (1994, p. 104).

48 Pfohl (1983, p. 13).

49 In XVII century in western Europe penalty of *opus publicum* was wide-spread. In Germany it developed into *Kerrenstrafe* (penalty of wheel-barrows). Convicts sentenced to this kind of penalty often performed hard and unproductive work.

50 Solomon (1996, p. 202).

51 Beermann (1985a, p. 200).

it proved to be totally ineffective. For example there is evidence that in the case of kulaks, when the amount of work served could not actually be measured, local authorities responsible for work assignments provided fake documents about successful completion of penalties[52].

In that situation Commissariats were given the task for developing plans for improving the execution of compulsory work. They turned out to be, however, unsuccessful. More and more often difficulties with sentence execution led to replacing compulsory work with short-term custodial sanctioning, contrary to primary assumptions[53]. From the mid 1920's as judges relied more and more on short imprisonment, compulsory work started to be in decrease. As also trivial offences resulted in confinement, prison overcrowding continued to climb, resulting in a prison crisis. As it could have been foreseen, prison conditions were quickly deteriorating leading to a situation worse than before introduction of compulsory labour.

The progressive approach to crime control was quickly abandoned after Law of August 7, 1932 was adopted. This Law penalised acquiring and retaining grains. With an enacting law that was so clearly directed against poor and hungry peasants who were sentenced for long term imprisonment for deeds committed in order to survive, all humanitarian aspects once present on criminal policy were ultimately forgotten. That law was applied in its extremely severe form from January to May 1933. However, even when it was applied very little after 1934, liberalisation of penal policy was inevitably stemmed[54]. Legal standards maximally deteriorated with Stalin's rise to power.

With Stalin gaining absolute and dictatorial authority, the severity of punishments increased significantly[55]. Stalin stressed upon retribution and deterrence. Reforming and re-educating convicts, even from the toiling classes, lost its meaning. Short and middle-term custodial sanctions returned to be the most popular punishments and a tool to handle petty offences. Compulsory work that from 1933 changed its name to corrective labour remained in the sentences catalogue, however, started playing minor role. One of the last bastions, where it still played a significant role before the war, was sentencing work shirkers[56]. The Ukase of the Presidium of the USSR Supreme Soviet of June 26, 1940 provided that shirking work without valid reasons is punishable with corrective labour up to six months and the loss of up to 25% of wages at the place of work[57]. Deducing a considerable percentage of earnings for even minor regulatory infringements like arriving to work late started to be obligatory. Judges that had perceived the punishment as too harsh and had used suspended sentences and punishments under the set minimum were disciplined.[58] Considering that labour infractions were treated with every severity and punishments imposed for them were out of any proportion to the wrong committed, using corrective labour in this context cannot be seen as a sign of liberalisation of criminal policy.

Following the pattern

An idea of the compulsory labour (in its primary normative form) was revolutionary and contagious for legislations of other socialist countries, where it was adopted and subsequently developed[59]. It can be *prima facie* noticed that multiform criminal construction of the penalty basically mirror the Soviet predecessor. Nonetheless, the punishments of corrective labour were faithfully and exactly copied from the post-war regulation of the penalty, which redefined and

52 Solomon (1996, p. 93).
53 Solomon (1996, p. 67-68).
54 Solomon (1996, p. 222).
55 Solomon (1996, p. 227).
56 More specifically: Gsovski (1951, p. 385).
57 Kucherov (1970, p.167).
58 Solomon (1996, pp. 312-320).
59 Information about provisions on corrective labour in criminal codes of socialist countries was based upon the comprehensive comparative examination of Jerzy Śliwowski: Śliwowski (1979, pp. 39-47).

rationalised the penalty implementation and therefore increased its use to more than a half of the criminal sentences imposed in criminal cases[60].

The punishment was introduced to Article 29 of the Criminal Code of the People's Republic of Mongolia[61], Articles 33-34 of the Criminal Code of Democratic People's Republic of Korea[62], Articles 37-40 of the Criminal Code of Czechoslovak Socialist Republic[63], Articles 42-44 of Criminal Code of People's Republic of Hungry[64], Criminal Code of People's Republic of Bulgaria[65] , Articles 23-24 of Criminal Code of People's Republic of Albania[66], Article 8 of the Socialist Labour Discipline Law[67] and subsequently Articles 33-35 of Criminal Code of People's Republic of Poland[68].

All of these criminal codes gave possibility to impose corrective labour for the term prescribed in law, usually from one month to one year. If a person had been already employed, the labour was obligatorily performed in the same workplace with the income deduction for the benefit of the state. Usually the deduction was ranging from 5 to 20% of the payment. If convicts were unemployed, state organs were in charge of specially appointing and providing occupations for them. The punishment could be suspended and after serving half of the sentence the penalty could be released on parole. The period of serving the sentence was not treated as a time of work and therefore all work allowances were suspended for this period of time. Time spent in arrest was deduced from the duration of the sentence of corrective labour at the ratio one day of imprisonment to three days of labour. Penalty shirkers were sentenced to substitute incarceration lasting the same as the initial sentence for corrective labour[69]. If a convict evaded performing labour properly for the prescribed time, the penalty was changed into substitute incarceration after a re-count of remaining working days to the same amount of days of imprisonment.. The penalty could not be used in the case of soldiers. The period of time required for the prescription of criminal liability was short and generally lasted three years. In most of the codes after three years of serving the punishment, it was erased from the register of convictions.

Community service as the West European equivalent of corrective labour

In the 1960's in Great Britain there was an urgent need for an introduction of alternative sanctioning that would provide a relief to overcrowded penitentiary facilities[70]. In 1970 the Advisory Council chaired by Barbara Wootton presented a report *Non-Custodial and Semi-custodial Penalties*. The Council advised on enacting law amendments that would enable the introduction of community service.[71] In 1972 the legislature enacted the Criminal Justice Act that foresaw this penalty for a pilot project[72]. As it appeared to be successful, it was subsequently extended to the whole territory of England and Wales[73].

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60 Nikiforov, (1940, p. 40), F. Feldbrugge (1997, pp. 33-70).

61 The Criminal Code of the People's Republic of Mongolia was enacted on 17 January 1942 and remained in force till 1961

62 The Criminal Code of Democratic People's Republic of Korea was enacted on 3 March 1950.

63 The first Criminal Code of the People's Republic of Czechoslovak Socialist Republic was enacted on 12 July 1950, the second in 1961.

64 The first Criminal Code of the People's Republic of Czechoslovak Socialist Republic was enacted in 1951, the second in 1961.

65 The first Criminal Code of the People's Republic of Bulgaria was enacted on 2 February 1951, the second in 1968.

66 The Criminal Code of the People's Republic of Albania was enacted on 23 May 1952.

67 The Socialist Labour Discipline Law was enacted on 27 April 1950.

68 The Criminal Code of the People's Republic of Poland was enacted on 19 April 1969.

69 In some legislations the ratio between imprisonment and the community service was three days of custody to one day of work.

70 Smith (1974, p. 244).

71 Pease, McWilliams (1980, p. 1).

72 Frankowski (1982, pp. 300-301).

73 Pfohl (1983, p. 124).

The community service order was in every respect innovatory. The legislature decided to base upon the probation system deeply rooted and established in *common law* tradition, especially that the concept of productive work and service in the interest of the community has for long been a strong one and is well attested not only in the history of penal thinking in Great Britain[74]. Nonetheless, the community service order in its function and construction resembles considerably compulsory labour. It also requires an offender to carry out a number of hours of work that is established by court and ranges between forty and three hundred . The work is not paid by the state and is performed under the supervision of probation officers for the benefit of society. Those sentenced for a community service are obliged to perform charitable services or to work for institutions engaged generally in social work. It is believed that though the activities that are of benefit to the society, one might partially undo the committed wrong. In that context it is a more constructive way to punish perpetrators. There is no doubt that execution of this sanction is less cost-consuming compared to a prison sentence. The penalty should be commensurate to the offence as a court must not pass a community sentence on an offender unless it is of the opinion that the offence was serious enough to warrant such a sentence. Since enacting the Criminal Justice Act in 2003 a single generic community sentence was created that combines requirements currently available under different community sentences[75]. Requirements are *inter alia* compulsory unpaid work, participation in any specified activities, programmes aimed at changing offending behaviour, prohibition from certain activities, curfew, exclusion from certain areas, residence requirement, supervision, attendance centre requirements. Currently there is no general obligation to obtain consent of an offender for imposing the community service order in form of a duty of work as it is only needed for imposing such requirements like mental health treatment, drug treatment or alcohol treatment[76].

Obtaining consent of an offender is obligatory in the alternative model of community service, which is in force in Germany. The penalty also consists of performing labour for the prescribed amount of hours. However, its penal function differs substantially. In Germany there is a dualistic system of sanctions oriented on fines and imprisonment[77]. Therefore, a perpetrator can be sentenced to a community service only upon his request if he does not have the financial means to pay a fine. Without offender's request it is impossible for the court to impose this penalty as it would be considered contrary to the prohibition of compulsory labour and slavery provided in the Article 12 Section 3 of the German Constitution[78].

Due to the convergence of penal systems throughout the world, both models of punishment became extremely popular and were copied in most European and extra European criminal legislations[79]. The more wide-spread is the British community service order and was even adopted word for word in the Russian Criminal Code of 1997[80]. Therefore, the community service order became more common in fact that its forerunner, even in the legislation of a country that actually created it[81]. It is controversial to what extent West European legislations took notice of the experiences with implementation of the penalty in the countries from the Eastern block. Explicitly it did not take the example of the Soviet corrective labour. Following the pattern from beyond the iron curtain was politically impossible and improper. However, one cannot miss the great resemblance in normative construction of penalties, what might suggest that the model of compulsory labour was in fact influential also for western legislations.

Conclusive remarks

74 Prins (1976, p. 73).
75 Cavadino, Dignan (2007, p. 135).
76 Blakemore, Greene (1998, p. 65-66); Wasik (2001, p. 168-169).
77 Hönicke (1999, p. 53); Rössner (1986, p. 88); Schädler (1986, p. 118).
78 Hönicke (1999, p. 52); Pfohl (1986, p. 13).
79 Like Australia, Canada, New Zealand and some state legislatures of the United States of America.
80 The Russian Criminal Code came into force on 1 January 1997 and is currently in force.
81 Brughelli (1989. p. 8).

From the above-mentioned examples of historical and contemporary legislations one can draw a conclusion that the introduction of penalties similar to community service should always be envisaged in a light of providing an antidote to certain current problems of penal policy. Alternative sanctioning was introduced as a remedy to custodial penalties that are a failure for a large proportion of persistent offenders and additionally are the most expensive form of penal treatment. Imprisonment as the core of the penal system of most of the countries appeared to be disappointing from the point of view of aims and function of punishment. Therefore it should remain in the catalogue of punishments only as *malum necessarium.*

To paraphrase a renowned citation of John Austin[82], building new cells as a cure to criminality is just as successful as solving a problem of AIDS by building new hospitals. Reliance upon imprisonment is by far delusory. Therefore different legislators considered essential looking for a third way that would be milder more effective and cheaper. Non-custodial punishments basing upon the obligation to work seemed as a perfect option to fill the gap between fine and imprisonment and provide intermediate sanction.

However, the Soviet first experiences with the punishment of compulsory labour has shown that even in case of a bright penal concept it is not the innovative potential but the penalty implementation that plays a decisive role.

The Soviet penal experiment of introducing compulsory labour had two clear-cut aims: elimination of prison overcrowding and providing alternative to monetary sanctions and imprisonment. In its first decade the penalty spectacularly failed to achieve these aims. Because of the improper penalty implementation many offenders breached the work requirements and eventually returned to penitentiary facilities. Even more criminals were not offered a workplace at all by the local governments. That strengthened their feeling of immunity and led to the committing of further crimes. Therefore not only did prison revolving doors not stop, they started to spin faster.

Inadequate enforcement of experimental punishment was caused by lack of a systematic approach to penalty implementation. The whole burden of providing an appropriate workplace was rested upon the local authorities without consideration of what consequences that might cause in the light of significant unemployment. Local authorities could not provide efficient supervision for this amount of the workforce and therefore implementation of community labour frequently was entirely fictional. The factor that mainly contributed to the initial failure was that the punishment was introduced to the catalogue of sanction without the preparation phase or realisation of pilot projects. Overall chaos and uncertainty in revolutionary era also were grounds of organisational difficulties.

An idealistic approach to penal control contributed to a policisation of criminal justice. Liberal criminal justice reforms should be assessed as visionary, but at the same time illusory and impracticable. Implementation of corrective labour was their result. This sanction was more a realisation of Soviet dogmas on penology than it was founded on ratio-based criminal policy.

The introduction of compulsory labour to the arsenal of penal measures clearly proved that the idea of this sanction being a cure-all to the penitentiary crisis is purely Utopian. Experiences with implementing the sanction in practice verified positively the renowned criminological hypothesis that prison congestion is caused not by lack or inadequacy of penal measures but of inefficiency and fragmentariness of criminal policy. There is no doubt that compulsory labour cannot be a sole remedy to this problem. However, if its introduction is a part of systematic changes and proper care is taken over its implementation, penalty of compulsory labour might be valuable to the transformation of criminal justice.

Compulsory labour was initially considered to be repressive enough to measure with short-term imprisonment as it was assumed that it would provide an alternative for it. A shift in criminal policy towards more severe sanctioning led to the situation when this penalty stopped serving its original purpose. It substituted other more lenient penal measures, especially suspended sentences[83].

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82 The article of John Austin in Washington Post (14 April 1988) as cited in: Eigen, Siegel (1994).

83 Tonry (1994, p. 136), Israel, Chui (2006, p. 191).

Therefore when criminal policy started to be clearly retribution-oriented, the so called net-widening effect occurred. This thoroughly described phenomenon means that correctional measures that should be an alternative to incarceration often bring about the opposite. Those who normally would have avoided getting into net of social control fall into it and are subjected to often more severe and disproportional means. Criminalisation of labour infractions and an obligation to assign compulsory labour (corrective work) for these violations can serve here as a perfect example.

On the other hand, it must be noticed that compulsory labour is an adaptable penal concept. The fact that the penalty was so adopted worldwide and had cross-border influences upon different legislations mean that the time was ready to widen the catalogue of penal measures. The problems, which the legislators had to struggle with, were similar. It proves that penal systems polarised between fines and deprivation of liberty are not effective. Wiktorow and Michalin correctly notice that there is a precipice between incarceration and any other penalty[84]. Therefore it is essential to enrich the arsenal of sanctions with intermediate punishments.

The Council of Europe in 1986 declared that community service is probably the most progressive alternative penal measure introduced to European criminal law in the last ten years, the only one that seems to have many possibilities. The Council of Europe encouraged the member states to use it on a wider scale[85]. In context that alternative sanctioning with requirement to perform unpaid work for the benefit of society derives from the Soviet penal invention one should take notice of the experiences from the experimental phase of implementation of compulsory labour. The idea of doing sentence instead of time community service undergoes a huge international boom[86] and can be assessed as a valuable concept. Nonetheless, only if the history teaches all a lesson about difficulties in its realisation, disillusionment with the sanction can be avoided.

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84 Śliwowski (1979, p. 53).
85 Szewczyk (1996, p. 89).
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