

COMPULSORY LABOUR AS A CIVIC DUTY*

Goran Obradović** Marko Trajković***
University of Niš, Faculty of Law

This paper deals with compulsory labour as one of the fundamental civic duties in the function of the country's defence. The authors, considering the current regulations of the Republic of Serbia, as well as the ratified international treaties, endeavour to present the most significant aspects of this issue in a concise manner. Analysing the normative framework, also providing adequate comments and suggestions, the authors pay particular attention to the character of this obligation.

Key Words: *defence, labour, compulsory labour*

Introduction

One of the fundamental duties of a citizen of any country with free self-governance is to take part in its defence, in the event it is threatened. Hegel pointed out that an organised society veiled in the concept of state represents an idea of the revitalization of religion-and-ratio relation wherein what is specified as rational will bring us to its submission.¹ State is, in his opinion, "absolute authority and majesty", but not a majesty to be simply "subjugated" to, but a majesty we believe in.² The duty to participate in the country's defence is based on citizenship, which is a relation of solidarity, kinship, and closeness of a person and the state. That personal bond of people with their state is not dependent on its territoriality, and citizens consider their state their own common cause, for the interest and survival of which they fight for.³

A citizen may perform the duty to defend their country in several ways. Basically, these are: performing military service, compulsory labour, or requisition, as well as par-

* The paper is a result of the research on the Protection of Human and Minority Rights in the European Legal Space project (no. 179046), of the Faculty of Law of the University of Niš, supported by the Ministry of Education, Science and Technological Development of the Republic of Serbia.

** Goran Obradović, Ph.D., Full Professor, obrad@prafak.ni.ac.rs

*** Marko Trajković, Ph.D., Full Professor, marko@prafak.ni.ac.rs

¹ G.W. F. Hegel, *Osnovne crte filozofije prava*, Veselin Masleša-Svijetlost, Sarajevo, 1989, p. 371 (Hegel, *Elements of the Philosophy of Right*)

² G. W. F. Hegel, *Enciklopedija filozofskih znanosti*, Veselin Masleša-Svijetlost, Sarajevo, 1987, p. 435 (Hegel, *Encyclopedia of the Philosophical Sciences*)

³ R. Lukić, *Uvod u pravne nauke*, Zavod za izdavanje udžbenika Narodne Republike Srbije, Beograd, 1960, p. 48 (R. Lukić, *Introduction to Jurisprudence*)

ticipating in the civil defence. The Law on Defence of the Republic of Serbia⁴ exactly stipulates these ways of participation of its citizens. The primary way of a citizen's contribution to the country's defence is to perform their military service. It involves, by its nature, any person capable of military service. The Serbian Armed Forces, pursuant to the Serbian Law on the Armed Forces⁵, consist of permanent and reserve composition, where the permanent composition of the Serbian Armed Forces consists of the professional Serbian Armed Forces personnel and conscripts. Their reserve composition consists of reserve officers, reserve non-commissioned officers, and reserve soldiers.

Compulsory labour involves all the citizens capable of labour, who do not have wartime deployment in the Serbian Armed Forces, and are from 18-65 years of age (60 for women). The manner of exercising this civic duty is regulated in more details in the Law on Conscription, Compulsory Labour, and Requisition⁶ and the Directive on the Manner and Procedure of Performing Military Service, Compulsory Labour, and Requisition,⁷ and the grounds for its existence can be found in the Constitution of the Republic of Serbia⁸, which stipulates that labour or services during war or state of emergency will not be considered forced labour.⁹

The term of compulsory labour and compulsory labour registrants

The term of *compulsory labour* is specified in the Law on Conscription, Compulsory Labour, and Requisition, as follows: "Compulsory labour is the right and duty of the Republic of Serbia citizens which they fulfil at their workplaces or at the specified jobs and tasks during state of emergency and at wartime in accordance with the Republic of Serbia's Defence Plan."¹⁰ Therefore, compulsory labour may exclusively be resorted to in the event of wartime or during state of emergency. The only derogation from this regulation is for the purpose of testing the readiness for execution of mobilisation, within the framework of planned exercises, and for controlling the organisation of defence preparations.¹¹

Compulsory labour registrants are, as above stated, all citizens capable of work, from 18-65 years of age (60 for women), who do not have wartime deployment in the Armed Forces. Noticeably, the lower age limit for exercising compulsory labour is higher than the one for establishing employment relationship (age of 15) and coincides with the age limit for acquiring the capacity to recruit. Additionally, the upper age limit for women is five years lower. This discrepancy in the upper age limit is conditioned by the discrepancy of the age for exercising the right to old-age pension. However, it is necessary to note that the five-

⁴ Official Gazette of RS, no. 116/2007, 88/2009-other law, 104/2009-other law, 10/2015 and 36/2018, art. 47.

⁵ Official Gazette of RS, no. 117/2007; 88/2009; 101/2010-other law, 10/2015; 88/2015-decision of the Const. Court, and 36/2018, art. 5.

⁶ Official Gazette of RS, no. 88/2009; 95/2010, and 36/2018.

⁷ Official Gazette of RS, no. 100/2011 and 60/2015.

⁸ Official Gazette of RS, no. 98/2006.

⁹ Article 26, Paragraph 4 of the Constitution.

¹⁰ Article 82, Paragraph 1 of the Law.

¹¹ Article 83a of the Law on Conscription, Compulsory Labour, and Requisition.

year discrepancy between men and women had existed before including 2014, and since 2015 the age limit for women has gradually been lifted. In 2018, an insured woman had to be 62 for exercising the right to old-age pension; whereas, from 2032, women will be allowed to retire only at the age of 65, i.e. as insured men.¹² Despite the fact that the reasons for lifting the age limit for retirement of women are conditioned by the sustainability of the pension and disability insurance system, we believe that it would not be wrong if the age limit for women in regard to performing compulsory labour was lifted.

Those exempted from compulsory labour are as follows: a spouse/cohabitee or any other adult member of the family household; a guardian/foster parent of a child before turning 15 or a juvenile child with developmental disorders (if the guardian/foster parent is engaged in defence duties); a woman during pregnancy; a person whose spouse/cohabitee is a beneficiary of care and assistance service and a person incapable of working. In this regard, a question of the manner of releasing from the obligation of compulsory labour on the grounds of *cohabitation* can be raised in practice. The status of being married is established on the basis of a credible document – marriage certificate, which is not possible for cohabitation. On the other hand, bigamy is legally banned, but the existence of several cohabitations is not. Consequently, the inevitable conclusion is that releasing on those grounds is only possible with the statements by witnesses; and also (theoretically) this right may be used by several persons (several cohabitees), as there is no legal limitation.

The manner of performing compulsory labour and its content

Compulsory labour may be performed in three ways prescribed by the Law on Defence, Law on Conscription, Compulsory Labour, and Requisition, and regulated in more details by the Directive on the Manner and Procedure of Performing Military Service, Compulsory Labour, and Requisition. They are: performing duties in a state body, business, other legal entity, and with an entrepreneur, at their own workplace and in the labour service units. The state bodies, legal entities and entrepreneurs, where compulsory labour is performed, are specified by the Government's act. Thus, they are only those subjects that are specified for manufacturing objects and rendering services significant for the country's defence.¹³ The specificity in regard to performing compulsory labour duty refers to law enforcement officers, who perform their compulsory labour duty at their workplace.¹⁴ It means that those persons cannot be deployed in another state body or employer, and in a labour service unit.

If the compulsory labour duty is performed in a state body or legal entity,¹⁵ the deployment of labour registrants is considered to be their wartime deployment; and their

¹² See the Law on Pension and Disability Insurance of the Republic of Serbia (Official Gazette of the RS, no. 34/2003, 64/2004-decision of the Const. Court, 84/2004-other law; 85/2005, 101/2005-other law, 63/2006 decision of the Const. Court, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014, 142/2014 and 73/2018.

¹³ See Art. 29 Para 4 of the Directive.

¹⁴ Article 51 Paragraph 2 of the Law on Defence.

¹⁵ Inherently, these will be the state bodies, legal entities and entrepreneurs performing activities of special significance for defence, protection and rescue. See Art. 84 of the Law on Conscription, Compulsory Labour, and Requisition.

deployment is determined, primarily, by their place of work or the place of residence. There will be an exception in a situation where there is no sufficient number of registrants for the wartime systematization in the registered seat of state body or legal entity. The authorisation for deploying compulsory labour registrants depends on where it is performed. If it is performed in the entities where those registrants are deployed, then they are deployed by the authorised person of that entity; whereas, the deployment of registrants who perform their compulsory labour duty in state bodies or legal entities out of their workplace is done by a regional centre of the Ministry of Defence. The regional centre will also deploy registrants registered in the records of territorial organs, the National Employment Service and the Republic Pension and Disability Insurance Fund.

The manner of performance is different in labour service units than in state bodies and legal entities. First of all, these units are formed from compulsory labour registrants having no wartime deployment, i.e. who are not deployed in that state body or legal entity. The purpose of these units is the performance of unpostponable work for the needs of defence, the Armed Forces and civil protection at wartime and during state of emergency. What type of work is classified as “unpostponable” is defined in the Directive on the Manner and Procedure of Performing Military Service, Compulsory Labour, and Requisition; whereby a possibility is left to also declare other work significant for the country’s defence by such an act of the Ministry.¹⁶ Although the Law on Conscription, Compulsory Labour, and Requisition, or the Directive, does not particularise where the deployment of registrants deployed in labour service units is determined, interpreting the general norm of the Law on Defence¹⁷, a conclusion may be drawn that the same rules are also applied when compulsory labour is performed in state body or legal entity. In other words, the deployment of compulsory labour registrants will be primarily determined at their place of residence and some other place only if there is no sufficient number of persons skilled for performing specific types of work.

¹⁶ The Directive, in Art. 35 Para 3, classifies what unpostponable work is, as follows: 1) maintenance of roads, bridges, railway lines, airports, run-up areas, heliports, ports, harbours, seaplane bases and anchorages; regulation and maintenance of water structures and points of crossing water and other barriers and construction and maintenance of warehouses, bases, dugouts and medical structures that are significant for defence; 2) participation in temporary teams that perform special tasks during mobilisation, de-conservation and activation of mobile equipment for special purposes in war reserve, distribution of war material reserves and assistance in transferring mobile equipment from warehouses to mobilisation assembly sites and other regions significant for the Serbian Armed Forces; 3) loading and unloading of mobile equipment for special purposes in ports, harbours, airports, railway stations, and gathering centres significant for defence; 4) assistance in transporting the injured and diseased and battlefield sanitation; 5) assistance in fire extinguishing, clearing ruins, flood defence and defence against other natural disasters, and repairing buildings; 6) loading and unloading commodity reserves and mobile equipment of state bodies, as well as of any legal entities specified by the Government’s act to manufacture equipment and render services significant for defence; 7) dislocation of production facilities, raw materials, and other material goods of legal entities having special significance for defence; 8) assistance in performing agricultural work on state and cooperative farms and rural estates owned by families of killed soldiers, disabled persons, and families whose members are engaged in the Serbian Armed Forces and civil protection; 9) regulation of settlements and structures for accommodation of displaced persons; 10) assistance in exploitation of forests, mining and other resources significant for defence; 11) regulation and construction of shelters and other fortification structures for protection of civilians; 12) displacement of facilities and documents having historical, artistic and cultural values.

¹⁷ Article 53.

Duties and rights of compulsory labour registrants

All the capable citizens, under conditions laid down by the Law, are obliged to complete their compulsory military service, compulsory labour and requisition.¹⁸ Regarding compulsory labour registrants, there are certain differences in relation to whether compulsory labour duty is performed at one's workplace, in state body or legal entity, or in a labour service unit. Employed persons are obliged to continue doing their work at their workplace, unless summoned to serve in the Serbian Armed Forces or assigned to other jobs and tasks. If they are summoned, they are obliged to act pursuant to the orders they receive.¹⁹

A compulsory labour registrant is obliged to act pursuant to the decision on deployment in state body or legal entity in the activity having special significance for defence. The failure to act accordingly means that the employment relationship of that employee ceases.²⁰ This reason for the termination of employment relationship is not prescribed by the Law on Labour²¹, being a general regulation regulating labour. Explicitly, this reason for the termination of employment relationship is also not prescribed by the Law on Civil Servants²², being a special regulation. However, enumerating all the ways of terminating employment relationship with civil servants, the Law also provides for "another way specified by this or a special law."²³ This reason for the termination of employment relationship can be, by its nature, classified as the grounds for the termination of employment relationship by the law. Then the termination of employment relationship occurs independently of the will of their subjects: the employer and the employee. The termination of employment relationship represents a consequence of the occurrence of certain fact, which cannot be challenged, conditioned, delayed, or prevented in any other way.²⁴

An employee, whose compulsory labour duty is not determined, is obliged to respond to the invitation of state body or legal entity in which they are employed, as well as upon the invitation of a territorial body for the purpose of engagement in performing their compulsory labour duty.

Activities related to the country's defence, including compulsory labour represent a citizen's duty, and also their right. The right to compensation on the grounds of work engagement is also recognised to compulsory labour registrants, in compliance with the law and other regulations that regulate employment relationships. This norm, obviously, refers to the application of the Law on Labour in relation to determining compensation on

¹⁸ Article 47 of the Law on Defence and Art. 82 of the Law on Conscription, Compulsory Labour, and Requisition.

¹⁹ Article 51 of the Law on Defence.

²⁰ Article 87 of the Law on Conscription, Compulsory Labour, and Requisition,

²¹ Official Gazette of RS, no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2014, 13/2017 – decision of the Const. Court, and 113/2017.

²² Official Gazette of RS, no. 79/2005, 81/2005-corr., 83/2005-corr., 64/2007, 67/2007-corr., 116/2008, 104/2009, 99/2014, and 94/2017

²³ Article 126, Paragraph 1, Item 5 of the Law on Civil Servants.

²⁴ Lj. Kovačević, *Valjani razlozi za otkaz ugovora o radu*, the Faculty of Law of the University of Belgrade, Belgrade, 2016, p. 102. (Kovačević, Valid reasons for termination of employment agreement).

the grounds of labour engagement of a compulsory labour registrant, i.e. they are entitled to the right to the so-called adequate salary, determined in compliance with the law, general act and employment agreement. Considering the fact that the employee is entitled to equal salary for the same work or work of equal value, the compulsory labour registrant is also entitled to the same right.²⁵

Compulsory labour registrants are also entitled to be provided with the conditions and means for performing compulsory work duty, and that is the duty of state bodies, businesses, and other legal entities, as well as entrepreneurs, where they are deployed with.²⁶ Compulsory labour registrants are also entitled to the right that their deployment, by default, is determined in the place of residence, as well as to have their health status established for the performance of their compulsory labour duty.²⁷

Character of compulsory labour

Participation in the country's defence including performing compulsory labour is, as it has already been said, the right and also the duty of a citizen. Non-performance of the prescribed duties necessarily entails certain consequences for a citizen.²⁸ Considering that circumstance, the question arises whether compulsory labour in the function of defence can be considered forced labour.

Essentially, forced labour is the negation of freedom of work and it is considered to be a new manifesting form of slavery. Yet, unlike slavery, which represents the deprivation of an individual of all personal and other rights, a person on forced labour is not deprived, and they are forced to perform certain work against their own will and under certain arrangement that is imposed to them and they do not receive salary for it.²⁹ Freedom from slavery and forced labour are part of classical right to freedom and independence of

²⁵ "Work of equal value" is considered to be work for which the same degree of professionalism, i.e. education, knowledge and skills is required, where the same contribution is made along with equal responsibility. For more details: Article 104 of the Law on Labour.

²⁶ Article 53, Paragraph 4 of the Law on Defence.

²⁷ Article 54 of the Law on Defence.

²⁸ Article 116 of the Law on Defence prescribes a fine in the amount of RSD 10.000-50.000 for citizens if: 1) they do not act in accordance with their orders to undertake other duties at wartime and state of emergency following the decision of the competent authority; 2) following the declaration of wartime or state of emergency they fail to continue their work at their workplaces; 3) following the declaration of war or state of emergency they refuse to act in accordance with the altered deployment or assignment to another legal entity; 4) they fail to act in accordance with the orders of the competent authority when military service, compulsory work, requisition, i.e. compulsory participation in the civil protection have been determined.

²⁹ B. Šunderić, *Pravo međunarodne organizacije rada*, the Faculty of Law of the University of Belgrade, 2001, p. 165 (Šunderić, *International Organisation Labour Law*) Speaking about this "new manifesting form of slavery", it is necessary to point out that it differs from the so-called "old slavery." Commonly, slavery is deemed to be a matter of ownership, and it depends a lot on what we mean by this term. Therefore, in the past slavery meant legal possession of one person by another. However, in contemporary world it is absolutely different and slavery does not mean legal possession (as it is prohibited all over the world), but exercising control over another human being and use of violence to exercise that control. More about it in: K. Bales, K., *Disposable people-New Slavery in the Global Economy*, University of California Press, Berkeley/Los Angeles, London, 2012, p. 5.

personality.³⁰ Among numerous international treaties that prohibit forced labour, the Convention no. 20 on forced labour adopted by the International Labour Organisation in 1930³¹ is particularly important. It is significant, *inter alia*, because its definition of forced or compulsory labour, provided later in it, is to a greater or less extent, broadly accepted. "Forced or compulsory labour" within the meaning of the Convention no. 29 means all performance of work or rendering services, which is exacted from any person under the menace of any penalty and for which the said person has not offered themselves voluntarily. Thereby, the expression "penalty" does not only signify criminal sanctions, but also various forms of fear, violence, keeping personal documents, denunciation (often to immigration authorities) or non-payment of salary. "Penalty" can also have a form of any loss of rights or privileges.³²

Despite the general prohibition of forced labour, the Convention provides for two types of exceptions. The first one refers to the possibility of using forced labour during a transition period in a member state, while the other type of exception is permanent by its nature.³³ The latter group of exceptions comprises five different forms of performing work without previous registration or agreement of the person, and which are not considered forced labour. They are: (a) any work or service exacted in virtue of compulsory military service laws for work of a purely military character; (b) any work or service which forms part of the normal civic obligations of the citizens of a fully self-governing country; (c) any work or service exacted from any person as a consequence of a conviction in a court of law, provided that the said work or service is carried out under the supervision and control of a public authority and that the said person is not hired to or placed at the disposal of private individuals, companies or associations; (d) *any work or service exacted in cases of emergency, that is to say, in the event of war or of a calamity or threatened calamity, such as fire, flood, famine, earthquake, violent epidemic or epizootic diseases, invasion by animal, insect or vegetable pests, and in general any circumstance that would endanger the existence or the well-being of the whole or part of the population;* (e) minor communal services of a kind which, being performed by the members of the community in the direct interest of the said community, can therefore be considered as normal civic obligations incumbent upon the members of the community, provided that the members of the community or their direct representatives shall have the right to be consulted in regard to the need for such services.

The Constitution of the Republic of Serbia³⁴, prohibiting slavery, forced labour and human trafficking, also contains exceptions, following the idea of the Convention no. 29; so, *inter alia*, labour or service of military personnel, or labour or services during war or state of emergency in accordance with the measures prescribed on the declaration of war or state of emergency, are not considered forced labour. Therefore, performing compulsory labour as a civic duty in the event of wartime or state of emergency is not, from legal viewpoint, forced labour.

³⁰ L. Betten, L., *International Labour Law-Selected issues*, Kluwer, Deventer-Boston, 1993, p. 125.

³¹ Official Gazette of FRY – International Treaties, no. 13/02.

³² ILO, *Combating Forced Labour: A Handbook for Employers & Business*, International Labour Organization, 2008, p. 8.

³³ J. M. Servais, *International Labour Law*, Kluwer Law International, The Hague, 2005, p. 130.

³⁴ Article 26.

Conclusion

A part of usual civic duties to the state is also participation in its defence. Performing compulsory labour is one of the manners for citizens to perform that duty. The current legislation of the Republic of Serbia regulates the manner of performance of this duty in a comprehensive manner, through the Constitution, laws, and by-laws. The interests of country's defence and the rights of compulsory labour registrants are, in priority, taken into account equally. Although the performance of this obligation, pursuant to the Convention no. 29 on forced or compulsory labour of the International Labour Organisation is not considered to be forced labour, and the conditions in which it is performed and, particularly, the rights of registrants, do not allow any comparison with forced labour.

Bibliography

- [1] Bales, K., *Disposable people – New Slavery in the Global Economy*, University of California Press, Berkeley/Los Angeles, London, 2012.
- [2] Betten, L., *International Labour Law – Selected issues*, Kluwer, Deventer-Boston, 1993.
- [3] Hegel, G. W. Hegel, *Enciklopedija filozofskih znanosti*, VeselinMasleša-Svijetlost, Sarajevo, 1987.
- [4] Hegel, G. W. Hegel, *Osnovne crte filozofije prava*, VeselinMasleša-Svijetlost, Sarajevo, 1989.
- [5] ILO, *Combating Forced Labour: A Handbook for Employers & Business*, International Labour Organization, 2008
- [6] Kovačević, Lj, *Valjani razlozi za otkaz ugovora o radu*, Pravni fakultet Univerziteta u Beogradu, 2016.
- [7] Lukić, R., *Uvod u pravne nauke*, Zavod za izdavanje udžbenika Narodne Republike Srbije, Beograd, 1960.
- [8] Servais, J.M., *International Labour Law*, Kluwer Law International, The Hague, 2005.
- [9] Šunderić, B., *Pravo međunarodne organizacije rada*, Pravni fakultet Univerziteta u Beogradu, 2001.

Regulations:

- [1] The Constitution of the Republic of Serbia (Official Gazette of the RS, no. 98/2006
- [2] Law on Defence (RS Official Gazette, no. 116/2007, 88/2009-other law, 104/2009-other law, 10/2015, and 36/2018.
- [3] Law on the Serbian Armed Forces, RS Official Gazette, no. 117/2007; 88/2009, 101/2010-other law, 10/2015; 88/2015-decision of the Const. Court, and 36/2018,
- [4] Law on Conscription, Compulsory Labour, and Requisition, Official Gazette of the RS, no. 88/2009, 95/2010 and 36/2018.
- [5] Law on Labour, RS Official Gazette, no. 24/2005, 61/2005, 54/2009, 32/2013, 75/2015, 13/2017-decision of the Const. Court, and 113/2017.
- [6] The Law on Public Servants, (Official Gazette, no. 79/2005, 81/2005-corr., 83/2005-corr., 64/2007-corr., 116/2008, 104/2009, 99/014, and 94/2017
- [7] Law on Pension and Disability Insurance of the Republic of Serbia (Official Gazette of the RS, no. 34/2003, 64/2004-decision of the Const. Court, 84/2004-other law; 85/2005, 101/2005-other law, 63/2006 decision of the Const. Court, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 74/2014, 142/2014, and 73/2018.
- [8] Law on the Ratification of Convention, no. 29 on forced or compulsory labour of the International Labour Organisation, Official Gazette of the RS-International Treaties, no. 13/2002.
- [9] Directive on Conscription, Compulsory Labour, and Requisition, Official Gazette of the RS, no. 100/2011 and 60/2015.