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Title: The right to work and employment set out in article 6 of the ICESCR as penitentiary law: an unsolved human rights stalemate.

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Abstract:

The elevation of the right to work and employment under equal, free and, above all, dignified conditions provided for in article 6 et seq. of the International Covenant on Economic, Social and Cultural Rights (ICESCR), adopted by the General Assembly of the United Nations on December 16, 1966, embodies an especially relevant foundation for building a second-generation stratum of Human Rights.

Nevertheless, its normative and social incorporation, particularly with regards to institutional practices, has traced a unique journey of breakthroughs and setbacks when analysed State by State.

Nowadays, there are still many unsolved problems related to the right to work and employment enshrined in the conditions and scope proposed in the international covenants on human rights – such is the case of work in the prison environment.

Punishments may be a necessary evil. They are essential for life in society due to the historically verified tendency for human beings to infringe the provisions that regulate social life. Still, the work undertaken inside the prison walls serves as a powerful integration instrument for prisoners. Such work is used as a tool within a broader process aimed at validating experience and the new knowledge that enable the reintegration of these people.

The goal of our paper is to present the results of a research carried out inside the Portuguese prisons from a gender perspective, adopting a legal-empirical methodological approach developed in the first semester of 2016, within the walls of an exclusively female prison by reference to the system of second-generation human rights.

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The main conclusion of our research, based on data analysis, interviews and non-participant observation, is that work in the prison environment is used as a means to survive life inside the prison walls and does not take on the protective dimension that characterizes a legal relationship of labour in the terms defined by civil law. Therefore, the goals set out in article 6 et seq. of the International Covenant on Economic, Social and Cultural Rights have not been achieved.

Hence, we believe that unrestrained and deregulated human labour, stirred by the structural and normative needs of a freedom restrictive system, congregates the worst of all misfortunes: “an assault” on the inviolable stronghold of human dignity.

Keywords: prisons, ICESCR, women, human rights, work