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BE WITHOUT PREJUDICE

a training project for prison staff for identifying
and responding to discrimination in prisons



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SENSITIVE ORIENTATED OPERATIONAL WORK IN PRISONS

-Manual for recognizing and responding to discrimination in prisons-



Pozarevac, Timisoara, Skopje 2021.





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CRIMINAL SANCTIONS ADMINISTRATION

Pozarevac-Zabela Penitentiary

Project partners

Penitentiary of Timisoara

Centre for Promoting Lifelong Learning Timisoara

Association of citizens Iuridica Prima Skopje

Authors

Dr. Dejan Novakovic, PhD -manager of the Pozarevac-Zabela Penitentiary, project coordinator

Martin Matijašević, PhD - project manager

Milan Veselinović, Head of the Treatment Service of the Požarevac-Zabela Penitentiary

Prof. dr. Angel Ristov, President Juridica Prima

Prof. dr. Zoran Jovanovski, coordinator Juridica Prima

Daiana Huber, CPIP

Anca Popescu, CPIP

Cristina Busuioc, project accessing and implementation officer Penitentiary of Timisoara

Diana Elena Conac, Penitentiary of Timisoara

Orest Dan Nicolau, Penitentiary of Timisoara

Despina Larisa Guleş, Penitentiary of Timisoara





***DISCRIMINATION = unequal treatment of equals
and equal treatment of unequals***

Note: The allegations contained in the publication do not represent the official positions of the European Commission, the Tempus Foundation in the Republic of Serbia, the Directorate for Execution of Criminal Sanctions, or the project partner, reflect the authors' thinking and aim to make recommendations for humane treatment of persons, to recognize and respond to discrimination in prisons. All terms used in the publication in the masculine grammatical gender include the masculine and feminine genders of the person to whom they refer.





SENSITIVE-ORIENTED OPERATIONAL WORK IN PRISONS

SUMMARY

The manual "Sensitively Oriented Operational Work in Prisons" includes an analysis of the system of execution of criminal sanctions in the Republic of Serbia, the Republic of Romania and the Republic of Northern Macedonia with an emphasis on the humane concept of work with persons deprived of liberty and a proactive approach to discrimination in prisons. He points to several important researches on discrimination in society and the attitude of the police towards discrimination in the period from 2012 to 2020, part of the publication deals with the areas of work in prison with an increased risk of discrimination. Issues of discrimination in prisons are considered through consideration and treatment of persons deprived of liberty from the Roma population, LGBT population, work with minors, persons deprived of liberty living with HIV, persons deprived of liberty with mental disorders, as well as consideration of the impact of emergencies on vulnerable groups of persons deprived of their liberty. Crimes with an increased risk of discrimination are also considered, primarily domestic violence, human trafficking, crimes against sexual freedoms, incitement to national, racial and religious hatred and intolerance. The final part of the paper presents the mechanisms of complaints within the system of execution of criminal sanctions of the Republic of Serbia, the Republic of Romania and the Republic of Northern Macedonia.

Key words: prisons, convicts, rights, equality, operative, discrimination.





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"In order to become free, it is not enough for a person to just throw away his chains, but he must live in a way that will respect and improve the freedoms of others."

Nelson Mandela

FOREWORD

The transition from the understanding of security, in which the main goal was the protection of state security, to the concept of human security, entails a changed role of subjects in the Directorate for Execution of Criminal Sanctions, which are no longer just bodies responsible for executing criminal sanctions. Today, they have a much broader and greater social responsibility and significance.

Today, members of the Security Service, employees of the Treatment Service, the Health Care Service, the Training and Employment Service and the General Affairs Service within the institutions for the execution of criminal sanctions must possess multidisciplinary knowledge. At the same time, they are civil servants, but also someone who should listen, advise and understand the problems of persons deprived of their liberty. In working with persons deprived of their liberty, different relationships are established and it is necessary that officials have the knowledge that will enable them to recognize and react to security threats, but also to protect the human rights of persons deprived of their liberty. Within the National Security Strategy of the Republic of Serbia, in the part related to the structure of the national security system, it is recognized that, in addition to other entities, tasks in the field of national security are performed by state administration bodies and institutions in charge of justice. In this context, the system of execution of criminal sanctions is part of the national security system of the Republic of Serbia and represents a complete system of organization, coordination, subordination, activities, forces, means and measures of various bodies aimed at achieving the purpose of punishment, rehabilitation, resocialization, employment and training of convicts. better integration into society.

The system of execution of criminal sanctions has gone through various phases of transition that cannot be viewed separately from the general social context and state-legal features of its time. In the recent history of Serbia, with the adoption of the then new Law on the Execution of Criminal Sanctions (entered into force on 01.01.1998) and the adoption of the Decree on the Establishment of the Institution for the Execution of Prison Sanctions (entered into force on 23.05.1998) in the Republic of Serbia. areas of execution of criminal





sanctions, especially in the area of exercising the rights of persons deprived of their liberty. Execution of imprisonment in Serbia is regulated by the Law on Execution of Criminal Sanctions (Official Gazette of the RS, No. 55/14, 35/19) (hereinafter: ZIKS), which in its basic form has been in force since 2014, as amended. and 2019 amendments. Two main reasons influenced the adoption of the new law: the need to harmonize the system of execution of criminal sanctions on the territory of the Republic of Serbia with its Constitution and the harmonization of the domestic legal system with international documents that form a framework for Based on the review of the provisions that regulate the execution of imprisonment within the Law on Execution of Criminal Sanctions, as well as the provisions of the Criminal Code, it can be concluded about the basic features of the execution of criminal sanctions in the Republic of Serbia.

According to the Law on the Execution of Criminal Sanctions of the Republic of Serbia, the execution of a prison sentence is carried out, organized and supervised by a single central institution called the Directorate for the Execution of Criminal Sanctions.. It is organizationally part of the Ministry of Justice of the Republic of Serbia. The structure of the system for the execution of criminal sanctions is such that it consists of the following institutions for the execution of criminal sanctions: penitentiaries and district prisons in several cities of the Republic of Serbia, Special Prison Hospital in Belgrade, Penitentiary for Women in Pozarevac, Penitentiary Institute for Minors in Valjevo and the Educational-Correctional Home for Minors in Kruševac. In the context of the reform of the execution of criminal sanctions, it is especially important that the Government of Serbia has adopted the Strategy for the Development of the System of Execution of Criminal Sanctions until 2020, with a special emphasis on the execution of extrajudicial sanctions. Having in mind the stated efforts, today there is a significantly reformed system of execution of criminal sanctions with improvements in practically all areas of execution of criminal sanctions with at the same time realized budget savings.

Reforms in all areas could not bypass the area of professional training and development of officials of the Ministry of Justice of the Republic of Serbia, the Directorate for the Execution of Criminal Sanctions, where significant results were achieved. In addition to the key importance in the system of execution of criminal sanctions, the Directorate for the Execution of Criminal Sanctions also has an educational and pedagogical role. It is a successful re-socialization and integration of convicted persons into socially responsible citizens of the Republic of Serbia.

An important factor in this process is the professional training and development of employees to work with convicted persons in all institutions for the execution of criminal sanctions in the Republic of Serbia. There are several concepts of execution of criminal sanctions in institutions for the execution of criminal sanctions. The intention of the management of institutions for the execution of criminal sanctions is a systematic approach





in the execution of criminal sanctions, where the support, rehabilitation and resocialization of convicted persons is influenced through the services of the institution. Social and psychological support provided to convicts on a daily basis, as well as professional training and education of employees in the institution through various courses, seminars and workshops are aimed at more successful work with convicts and after serving their sentence integration into the social environment from which they come. .

Following the Strategy for the Development of the System of Execution of Criminal Sanctions of the Government of the Republic of Serbia until 2020, as well as the best world and European practice, the Directorate for the Execution of Criminal Sanctions organizes, supports and implements various mechanisms for working with convicted persons. Emphasis was placed on psychological and sociological aspects, sports and recreational activities, cultural and artistic content, educational and work engagements of convicted persons. ContinuousThe support of the Ministry of Justice of the Republic of Serbia, exchange of project experiences with other similar institutions from the European Union and the surrounding area (Republic of Romania and the Republic of Northern Macedonia) influenced the constant progress and improvement of living conditions in convicts. in terms of security, but also the life and work of the employees of the Directorate for the Execution of Criminal Sanctions who perform highly stressful, responsible and specific tasks. Through numerous support mechanisms by the Directorate for the Execution of Criminal Sanctions, as well as individually the institution for the execution of criminal sanctions. One of the types of support is permanent education and professional training of employees, which is also the subject of the project "Be without prejudices - recognizing and responding to discrimination in prisons", which is being implemented in the period from 2019 to 2022.

The manual under the working title: "Sensitively oriented work in prisons" is intended primarily for employees of strategic, tactical and operational level in the Security Service of the Directorate for Execution of Criminal Sanctions, as well as other services, but also partner institutions on the project. The manual is the result of independent research work of a group of authors, the volume is over 250 author pages (B5 format), it consists of several chapters. The manual did not perform statistical processing nor did it use data from the area of activity of the Directorate for the Execution of Criminal Sanctions.

AUTHORS





CHAPTER I

1. PHENOMENOLOGY AND LEGAL FRAMEWORK FOR RECOGNITION AND RESPONDING TO PRISON DISCRIMINATION

Authors: Martin Matijašević, Dejan Novaković

1.1 The concept of human rights and the rights of persons with personal freedoms

Human rights in their present form are a recent achievement, and were first formed as a legal acquis in the Declaration of Independence of the United States from 1776¹ while significant progress was made by the French Revolution, ie the Declaration of the Rights of Man and Citizen from 1789.² The need to respect human rights is required to ask an important question: what are contemporary human rights and freedoms, as well as judicially related to the content of states and the rule of law? The answer is: first of all, these are subjective rights that every human being possesses as a member of the human race.³ Nevertheless, the governments of many countries arbitrarily granted or denied these subjective rights in certain periods.⁴ Placing human rights at the very top of international politics and social issues is largely the result of nations facing the Nazi Holocaust.⁵

In modern human rights law, the principle that all people are equal is generally accepted. The principle of equality is observed as well as the principle of non-discrimination. The word discrimination is of Latin origin and means distinction, which in the case of human rights would be an "impermissible distinction". It is in international law it is forbidden for anyone to suffer the consequences because he differs from other people in skin color, gender, religion, political belief, social origin, property. Common to all the basics in the distinction is that these are mostly human traits that people do not acquire of their own free will and make them members of a larger group against which discrimination

¹ Декларација о независности, 04. јули 1776. године (The Declaration of Independence, July 4, 1776), (http://www.heritage.org/file:///C:/Users/name/Downloads/FP_PS08.pdf, 18.03.2015).

² Декларација о правима човјека и грађанина из 1789. године (Déclaration des droits de l'homme et du citoyen de 1789), (<http://www.assemblee-nationale.fr/connaissance/constitution.asp#declaration>, 18.03.2015).

³ В. Димитријевић, М. Пауновић, Људска права, Београд 1997, стр. 25.

⁴ К. Митровић, Етичка страна преображаја правне државе и владавина права, Правни факултет, Универзитет у Нишу, Ниш, стр. 17.

⁵ З. Драгишић, Б. Јанковић, М. Бошковић, Прикупљање обавештајних података као изазов поштовању људских права, Политика националне безбедности, број 2/2015, Београд, 2015, стр. 76





is directed, and “where human happiness, well-being, security — finally human life itself it depends on someone else's alms and charity, no matter how generous the occasion, that there can be no talk of a life worthy of a man.”⁶

The term human rights originates from the period after the Second World War and the founding of the UN, when this term replaced the original phrases "natural law" and "human rights".⁷ All human rights are universal, indivisible, interdependent and interconnected. They are universal, which means that they belong to every human being equally. Like any other type of right, human rights are protected through various mechanisms - the Constitution, laws, international treaties and the like. In these documents, individuals are seen through a certain category (citizen, woman, worker, foreigner) or through classification into a certain group (ethnic group, political party, association).

This classification does not jeopardize the universality of human rights, but primarily serves for more efficient and precise protection. Human rights are inalienable, inseparable from the individual. They are not and cannot be a matter of merit, reward or choice, they cannot be sold, given away, earned or taken away. Human rights are irrevocable, which means that the state or someone else cannot revoke them. Human rights are indivisible. They are of the same importance and interdependent, so one group of rights cannot be achieved at the expense of another group of rights.⁸ Jasmina Hasanbegović states that: "Without human rights, there is no citizen - there is only Untertan (which is a German word for subject, more precise than the English word subject). Without human rights, there is no modern democracy, no modern constitution or constitutionalism, no rule of law understood as the rule of law".⁹

Human rights have gone through several categories throughout history and there is a tendency that with the globalization and development of society, the corpus of human rights is constantly expanding. Some of the basic human rights are in the domain of civil, political, economic, social and cultural rights, among others: the right to life, the right of a person not to be subjected to torture or inhuman or degrading treatment or punishment, the right of a person not to be held in slavery or subordination, or to forced or compulsory labor, the right to personal liberty and security.¹⁰

⁶ М. Игњатијевић, Људска права као политика и идолопоклонство, Јавно предузеће „Службени гласник“ Правни факултет Универзитета у Београду, Београд 2006, стр. 8.

⁷ Видети: Ј. Вакић-Муфтић 2002, Sistem људских права, Сарајево, магистрат, стр. 149.

⁸ М. Рудић, Људска права – приручник за наставнике, Београдски центар за људска права, Београд, 2011, стр. 7.

⁹ Ј. Хасанбеговић, Култура и/или идеологија људских права – реторика и реалност, Анали Правног факултета у Београду, година 2009, број 4, стр. 82.

¹⁰ Кратки водич кроз људска права за грађане, Ресурсни центар за демократизацију, преузето 22.07.2016 у 13.27 са: <http://www.mreza-mira.net>





Personal freedoms and rights encompass multiple individual human rights. "These are freedoms and rights that protect the physical and spiritual integrity of a person and his privacy ... and these rights and freedoms, enshrined in the constitution, set the boundaries of state power."¹¹ The range of human rights is diverse and wide and still includes: the right to a fair hearing in civil and criminal matters and other rights related to criminal proceedings, the right to private and family life, home and correspondence, freedom of thought, conscience and religion, the right to decent Life, in accordance with the provisions of the International Covenant on Economic, Social and Cultural Rights, the right to safe and healthy working conditions, the right to advancement in accordance with years of service and abilities, the right to rest, leisure, reasonable limitation of working hours, the right to freedom of association, the right to social security, the right of family, children and minors to protection, the right to an adequate standard of living and protection from hunger, freedom of expression.¹²

Basic political rights and freedoms include: freedom of opinion and expression, freedom of peaceful assembly, freedom of association, freedom of the media, the right to information and access to information held by public authorities, the right to vote, the right to participate in public affairs and the right to petition.¹³ Other important rights are: the right to marry and to found a family, the right to property, the right to education, the right to freedom of movement and residence. The right to property, the right to work, the right to a fair wage and equal pay for work of equal value, the right of the individual to the highest degree of physical and mental health, the right to education, the right of parents to religious and moral education of their children in accordance with their beliefs, the right to participate in cultural life, the right to use science and technology. derive from copyright, the right to freedom in the fields of science and creativity, the right to conditions that ensure the preservation, development and dissemination of science and culture, the right to equality of peoples, the right to development, the right to peace, the right to a healthy environment.¹⁴

Finally, when it comes to human rights and actions of the subjects of the system of execution of criminal sanctions, the most important is the following corpus of human rights and their respect: the right to life, prohibition of abuse and position of persons deprived of liberty, prohibition of slavery and forced labor, right to liberty and security

¹¹ М. Пајванчић, Уставно право, Правни факултет, Нови Сад 2008, стр. 86.

¹² Кратки водич кроз људска права за грађане, Ресурсни центар за демократизацију, преузето 22.07.2016 у 13.27 са: <http://www.mreza-mira.net>.

¹³ Б. Милосављевић, Д. Поповић, Уставно право, Треће измењено и допуњено издање, Београд 2009, Правни факултет Универзитета Унион и Јавно предузеће Службени гласник, стр. 160-162

¹⁴ Кратки водич кроз људска права за грађане, Ресурсни центар за демократизацију, преузето 22.07.2016 у 13.27 са: <http://www.mreza-mira.net>.





personalities, the right to privacy and the secrecy of correspondence, protection of personal data and protection of privacy, freedom of expression, right to work, labor rights, right to social security, minority rights, position and rights of Roma, problems and rights of persons with disabilities, position of persons of different sexual orientation or gender identity, gender equality and special protection of women and other rights of persons deprived of their liberty.

A 2002 Human Rights Watch report stated that standards for the protection of persons deprived of their liberty in most countries of the world were "astonishingly low." Namely, in some countries, corporal punishment and routine use of shackles and chains are still allowed today. Explosions of violence are not uncommon, so in some countries murders between prisoners are common, e.g. in Brazil, Kenya, Venezuela, Panama). The number of persons deprived of their liberty, especially prisoners, who die during deprivation of liberty worldwide, especially in suicides, is in constant progress, so that the suicide rates of persons deprived of their liberty are many times higher than the suicide rate in the general population.¹⁵

Each of the human rights of persons deprived of their liberty may be restricted by some form of discrimination, so it is crucial to point out the concept of discrimination. Discrimination is any unjustified discrimination or unequal treatment, ie omission (exclusion, restriction or preference), in relation to persons or groups as well as to members of their families, or persons close to them, in an open or covert manner, based on actual or presumed personal property.¹⁶

Simply put, discrimination is unequal treatment of a person or a group on the basis of some of their personal characteristics, which results in inequality in the chances of exercising the rights guaranteed by the constitution and the law. It is unequal treatment, exclusion, the bringing into a subordinate position of individuals or groups of people who are in the same, similar or comparable situation.¹⁷

It can be discriminated against by doing or not doing. A good example of inaction may be when the prison administration does not display notices in the language and script of persons deprived of their liberty from national minorities, even though the conditions prescribed by law are met. Discrimination can happen to anyone: prison employees (individuals and groups of employees), persons deprived of their liberty, but also a legal entity. A person who discriminates in one social situation may in some other circumstances be a discriminator, ie a person who discriminates.¹⁸ Having in mind the powers it

¹⁵ Стр. 1

¹⁶ Члан 2. став 1 Закона о забрани дискриминације (Сл. гласник РС, бр. 22/2009).

¹⁷ Videti opsirnije: <http://www.ravnopravnost.gov.rs/rs>

¹⁸ Извор: <http://www.ravnopravnost.gov.rs/rs>, 22.05.2016.





possesses, the situation is especially dangerous when the state is in the role of a discriminator. An act of discrimination can be directed at an individual, but also at a wider group of persons deprived of their liberty.¹⁹

Discrimination can be direct or indirect. Immediate discrimination exists if a person deprived of liberty or a group of persons, due to his or their personal characteristics in the same or similar situation, by any act, action or omission is placed or placed at a disadvantage or could be placed at a disadvantage. Dušan Pokuševski states that direct discrimination is easily recognizable, it is visible, and the discriminator does not try to hide his actions.²⁰

Indirect discrimination exists if a person deprived of liberty or a group of persons, due to his or her personal characteristics, is placed at a disadvantage by an act, action or omission which is ostensibly based on the principle of equality and non-discrimination, unless justified by a legitimate aim. achieving that goal are appropriate and necessary.²¹

When it comes to the necessary conditions for respect for human rights and protection against discrimination in deprivation of liberty and execution of all criminal sanctions, certain principles that must be respected are important. Namely, it is necessary to respect and consistently apply all laws and bylaws in this area, then act humanely with all persons deprived of liberty without degradation of their personality, without discrimination and humiliation. Torture, abuse or experimentation are also prohibited. Persons deprived of their liberty must be provided with contact with the outside world and family and informed about events outside the institution where they are detained or serving a prison sentence, they must be provided with occupational therapy and professional training, as well as appropriate measures and treatments rights, which will be discussed in more detail later.²²

¹⁹ Д. Покушевски, *op.cit.*, стр. 6.

²⁰ Д. Покушевски, *op.cit.*, стр. 7.

²¹ Члан 7. Закона о забрани дискриминације, („Сл. гласник РС”, бр. 22/2009).

²² Стр. 1-2





1.2. International legal framework for the protection of the human rights of persons deprived of their liberty

The protection of human rights, and the rights of persons deprived of their liberty in general, can be viewed from two aspects - domestic and international. The internal system of human rights protection is older, institutionally better built, because national institutions are almost always institutions of protection. The basis of such protection is the constitution as a fundamental document, as a *lex fundamentalis* and a *lex superior*. International protection of human rights is more recent and has been intensively developed after the Second World War.

The basis of such protection are international treaties of states, and one of the ways to realize the rights contained in these documents are international institutions, primarily with the characteristics of a judicial body. "First, an international agreement should be signed, which precisely defines and carefully enumerates various individual rights. Each state should then undertake to take the necessary measures to implement the law in question into its constitutional law. Finally, an international body of an administrative or judicial nature should monitor the exercise of this constitutional right ..."²³

To date, more than forty treaties, resolutions and other multilateral (universal and global) documents of a binding nature have been adopted, which are considered international sources of human rights and are in conflict with the domestic law of the signatory states. In some cases, they defined human rights even more precisely and concretely, and in some cases they even expanded certain rights and protections. In doing so, it should be borne in mind that charters, conventions, agreements and treaties on human rights are dynamic documents, ie "living instruments" that should be interpreted in accordance with the development of modern circumstances. On the other hand, several declarations of a recommendatory-normative character were adopted, namely: „Universal Declaration of Human Rights of 1948“, „Geneva Convention of 1948, revision of 1949“, „International Convention on Human Rights Asylum of 1951.“, „Declaration on the Elimination of All Forms of Intolerance and Discrimination Based on Religion or Belief of 1981“, „Declaration on Basic Principles of Justice for Victims of Crime and Abuse of Power of 1985“, „Declaration on protection of all persons from enforced disappearance

²³ L. Delbez, *Les principes generaux du droit international public*, Paris, 1964, p.1999 u S. Milenković *Unutrašnja nadležnost država i međunarodna zaštita ljudskih prava*, Beograd, 1974, str. 23





in 1992.“, „Declaration on the Rights of Persons Belonging to National, Ethnic, Religious or Linguistic Minorities of 1992“.²⁴

International instruments that have an undoubted impact on penological law and the system of standards for the execution of criminal sanctions are numerous and diverse:

Standard Minimum Rules for the Treatment of Prisoners²⁵ were adopted in 1955. at the First UN Congress on Crime Prevention and the Treatment of Delinquents, as a result of the work of the International Prison Commission. They were confirmed on July 31, 1957. by the UN Economic and Social Council in Resolution 663 C I (XXIV).

Given the progressive development of human rights since 1955, in December 2015, the Standard Minimum Rules for the Treatment of Prisoners were revised, with revised rules known as the "Nelson Mandela Rules" in honor of the late South African President who 27.god. spent in captivity during his struggle for global human rights, equality, democracy and the promotion of culture and peace.²⁶

These rules proclaim several basic principles in the treatment of prisoners. First of all, the approach to protection from crime through punishment, which has the basic goal of re-education, is important. It is important to apply adequate corrective, educational and other methods, which lead to resocialization. Furthermore, the treatment of prisoners should be such as to enable them to perform normal roles in freedom, and prison conditions must be adapted to the conditions of release so that convicts may be prepared for life at large after serving a prison sentence.²⁷

These rules must be applied impartially. There must be no discrimination based on race, color, sex, language, religion, political or other beliefs, national or social origin, property status, birth or any other status. The religious beliefs and moral principles of prisoners must be respected. For the purpose of the practical application of the principle of non-discrimination, prison administrations must take into account the individual needs of prisoners, and in particular the most vulnerable categories in prison settings.²⁸

The Republic of Serbia, as well as the Republic of Romania and the Republic of Northern Macedonia are bound by all major international human rights treaties, namely: the International Covenant on Civil and Political Rights and two protocols to the Covenant,

²⁴ М. Наранчић, Морална компонента људских права – мастер рад, Универзитет у Нишу, Правни факултет, Ниш 2015, стр. 31.

²⁵ *Standard Minimum Rules for the Treatment of Prisoners*, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offender, Geneva, 1955., преузетп дана 20.05.2016. <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>

²⁶ Penal reform internacional-*Standard Minimum Rules for the Treatment of Prisoners*, преузетп дана 12.05.2016. ca <http://www.penalreform.org/priorities/global-advocacy/standard-minimum-rules/>

²⁷ Стр. 5

²⁸ Penal reform internacional-*Standard Minimum Rules for the Treatment of Prisoners*, преузетп дана 12.05.2016. ca <http://www.penalreform.org/priorities/global-advocacy/standard-minimum-rules/>





the International Covenant on Economic, Social and Cultural Rights, the International Convention on Abolition all forms of racial discrimination, the International Convention on the Elimination of Discrimination against Women and the Protocol to this Convention, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Protocol to this Convention, the Convention on the Rights of Persons with Disabilities and the Protocol and other international acts.²⁹

International Covenant on Civil and Political Rights³⁰ in Articles 9 and 10, it proclaims fundamental rights when it comes to persons deprived of their liberty. In relation to these persons, the principle of humanity and non-discrimination is proclaimed. The principle of humanity is reflected in the provisions of the Covenant, which stipulate that persons deprived of their liberty are treated humanely, with respect for human dignity, which is inseparable from the human person.³¹ This principle is also reflected in the prohibition of torture, cruel, inhuman or degrading treatment or punishment. It is especially forbidden for persons deprived of their liberty to undergo medical or scientific research. In accordance with the principle of non-discrimination, the provisions of this act state that all persons, without any discrimination, are equal before the law and in court and that member states are obliged to prohibit any discrimination based on race, sex or color within their national dignity. , language, religion, political or other belief, national or social origin, property status, birth.

Basic principles for the treatment of prisoners³² no. 45/111 of 14 December 1990 emphasizes the prohibition of discrimination against prisoners on any ground, and they must be treated with respect for the innate dignity they possess as human beings. Prisoners have the right to take part in cultural activities, and are guaranteed the right to access health facilities available in the country without discrimination on the basis of their legal status. Prisons must, as far as possible, create the conditions for reintegration so that former prisoners can be easily integrated into the social environment after release.

In 1984, the UN General Assembly adopted the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.³³ This Convention obliges

²⁹ В. Петровић, Д. Покушевски, Људска права у Србији 2015 – право, пракса, међународни стандарди, Београдски центар за људска права, Београд 2016, стр. 61

³⁰ *International Covenant on Civil and Political Rights*, adopted by General Assembly UN resolution 2200A (XXI) of 16 December 1966., преузетп дана 01.06.2016. <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>

³¹ С. Константиновић Вилић., М. Крстић.: „Пенитенција“, Ниш, 2006., стр. 38

³² *Basic Principles for the Treatment of Prisoners*, adopted by General Assembly UN resolution 45/111 of 14 December 1990,

³³ *Convention against torture and other cruel, inhuman or degrading treatment or punishment*, adopted by General Assembly UN resolution 39/46 of 10 December 1984., преузетп 09.10.2016, <http://www.ohchr.org/en/ProfessionalInterest/pages/cat.aspx>





States to criminalize acts of torture, attempted torture and all other acts of any person complicity in an act of torture, and to prescribe appropriate penalties commensurate with the gravity of the offense.

The European Convention on Human Rights is also very important to us (енгл. European Convention on Human Rights, фр. la Convention europeenne des Droits de l'Homme) as a legal act of the Holy Europe on the protection of freedom and rights, passed in Rome, Italy, on November 4, 1950. In the period from 1950 to 2004, 46 countries signed the Convention. The signing marked the acceptance of the obligation to respect rights and freedoms, as well as the recognition of the jurisdiction of the European Court of Human Rights. The Convention has a total of 59 articles, of particular importance is Article 1, which sets out the obligations of all signatory states to respect the rights and freedoms they guarantee. Pursuant to the provisions of Article 3 of the European Convention, no one shall be subjected to torture or to inhuman or degrading treatment or punishment. Article 3 absolutely prohibits torture, inhuman or degrading treatment or punishment and as such does not provide for any exceptions or derogations from it in accordance with Article 15 of the European Convention on Human Rights, even in times of war or other danger to the survival of the nation.

The rights and freedoms guaranteed by the Convention are: the right to life (Article 2), the prohibition of torture, inhuman and degrading treatment (Article 3), the prohibition of slavery and forced labor (Article 4), the right to liberty and security (Article 5), the right to a fair trial (Article 6), punishment only on the basis of law (Article 7), the right to respect for private and family life (Article 8), freedom of thought, conscience and religion (Article 9), freedom of expression (Art. 10), freedom of assembly and association (Art. 11), the right to marry (Art. 12), the right to an effective remedy (Art. 13), the prohibition of discrimination (Art. 14).³⁴

The Short Guide to the European Convention on Human Rights emphasizes the importance of individual freedom and security, in Article 5 of Protocol No. 1. 4: "Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law, (in the case of lawful arrest or deprivation of liberty for failure to comply with a lawful court decision or for ensuring fulfillment of an obligation prescribed by law; competent authority due to a well-founded suspicion that he has committed a criminal offense or because it is justifiably considered necessary to prevent him from committing a criminal offense or to flee after the commission, in case of deprivation of liberty of a minor on the basis of a legal decision on educational supervision; in the case of lawful deprivation of liberty to prevent

³⁴ М. Пешић, Пракса Европског суда за људска права која се односи на слободу изражавања, мастер рад, Правни факултет, Универзитет у Нишу, Ниш, 2015, стр. 7-8.





the spread of infectious diseases, mentally disturbed persons, alcoholics, drug users or vagrants, in the case of lawful arrest or deprivation of liberty to prevent unauthorized entry into the country or to ensure expulsion and extradition). Any person arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of the possible charge against him.³⁵

The portal "Безбедност на длану" presents the relationship between human rights and security actors in prisons, which is said to be: "Human rights are innate rights of every human being. Security sector actors who use force are obliged to respect human rights in the performance of their duties and powers in accordance with international human rights law and human rights standards in the security sector. Each state has an obligation to ensure that members (employees) of security sector actors who use force respect and implement human rights and fundamental freedoms that are reflected in instruments of international law and that are in accordance with the relevant national constitutional and legal provisions."³⁶

European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment³⁷ was adopted in 1987, and entered into force in 1989. and sets out in more detail the mechanism for the protection of persons restricted by freedom of movement from public authorities from torture, inhuman or degrading treatment or punishment, and establishes a European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). The most important documents that have established and regulated standards for the humane treatment of convicted persons at the international level are the European Prison Rules.³⁸ regarding prison treatment between the member states of the Council of Europe.

The European Prison Rules, adopted in 1987 (revised in 2006), set out a detailed system of rules for the protection of persons deprived of their liberty in European countries.

The first part states the general principles and determines the scope of application. Among the general principles are: respect for human rights and freedoms, minimum restrictions on persons deprived of their liberty, proportionate to the legitimate aim for which they were imposed, approximation of prison conditions to conditions of

³⁵ Д. Гомиен, Кратак водич кроз европску конвенцију о људским правима, Прометеј, Београд 1994, стр. 20.

³⁶ Безбедност на длану – портал о реформи сектора безбедности у Србији, преузето 22.07.2016 у 12.49 са: <http://reforma.bezbednost.org/ljudska-prava/sta-su-ljudska-prava/>

³⁷ *European Convention for the prevention of Torture and Inhuman or Degrading Treatment of Punishment*, Committee of Minister of the Council of Europe, Strasbourg, 1987., преузетп дана 30.04.2016., <http://www.cpt.coe.int/en/documents/ecpt.htm>

³⁸





freedom, prison staff perform a public function and should therefore be carefully selected and trained to provide the necessary working conditions...

The Second Part contains provisions on the conditions for closure: Admission to the institution - is possible only with a referral order, issued in accordance with the law; upon admission, data is first recorded, familiarized with the rules, medical examination... Referral to prison and accommodation - if possible, prisoners are sent to prisons that are close to their homes and families. Accommodation conditions should be such as to respect hygiene, privacy, lighting, heating... Hygiene - all prison premises must be constantly maintained and cleaned, prisoners must have access to hygienically correct premises, bathing conditions must be provided every day or at least twice a week. Clothing and bedding - clothing must not be degrading or degrading and must correspond to climatic conditions. Nutrition - Prisoners have the right to a diet appropriate to their age, health and physical condition, religion, culture and nature of work. Legal aid - The prison administration is obliged to provide conditions for the provision of free legal aid. Contacts with the outside world - Prisoners have the right to communicate, without restriction, by letters, telephone, or otherwise with family members, other persons, and prison services assist them in doing so. Prison regime - within the prison regime, a program of activities is envisaged that will enable all prisoners to spend enough time outside the prison premises for social integration. Labor - It should never be used as a punishment and prison authorities must strive to provide enough useful work for prisoners, without discrimination on the grounds of gender. Physical activity and recreation - Every prisoner should be able to exercise for at least one hour in the fresh air each day if weather conditions allow. Education - Education as a treatment for convicts must be available to all, especially to illiterate persons and young people. Freedom of opinion, conscience and religion is guaranteed to all persons. Transfer of prisoners - must be done in such a way that care is taken to keep the person as exposed as possible to the public eye. Release from Prison - All prisoners are released without delay, after the expiry of the transfer order or when a court or other authority orders their release.

The third part pays attention to the health of convicts: health care, mandatory professional staff, at least one health worker, who also has knowledge of psychiatry. The fourth part contains recommendations regarding the maintenance of order and security in the prison, where it is said that order is maintained by taking into account the need for security, while providing prisoners with normal living conditions that respect human dignity.

Part Five discusses the administration and staff, bearing in mind the prison system as a public service, and states that prisons are managed in an ethical spirit, and that prisoners are treated in a humane manner. The sixth part includes provisions on inspection and supervision, which provide for both state inspection and independent supervision. The





seventh part is dedicated to the detainees, and their status, clothing, contact with the outside world. increase suffering.³⁹

1.3. National legislation of Serbia, Romania and Northern Macedonia and the rights of persons deprived of their liberty

Persons deprived of their liberty have the right to protection of fundamental rights prescribed by the Constitution (Republic of Serbia, Republic of Romania, Republic of Northern Macedonia), ratified international treaties, generally accepted rules of international law and law, and restriction of fundamental rights is possible only to the extent necessary and in the procedure prescribed by law. Although the rights of persons deprived of their liberty are nowadays defined by numerous international, legal and by-law acts, they are sometimes violated in practice,⁴⁰ and often persons deprived of their liberty are not even familiar with their contents, prison rules are often extensive and insufficiently clear.⁴¹

The Constitution of the Republic of Serbia, the part that refers to human and minority rights and freedoms in Article 21, envisages the prohibition of discrimination, it is emphasized that everyone is equal before the Constitution and the law. Everyone has the right to equal legal protection, without discrimination. Any discrimination, direct or indirect, on any grounds, in particular on the grounds of race, sex, nationality, social origin, birth, religion, political or other opinion, property, culture, language, age and mental or physical disability, is prohibited. . Special measures that the Republic of Serbia may introduce in order to achieve full equality of persons or groups of persons who are essentially in an unequal position with other citizens shall not be considered discrimination.⁴²

When we talk about persons deprived of their liberty and their rights, it does not mean that we mention some special rights, but about the realization of basic guaranteed rights that each of us should enjoy. The Constitution of the Republic of Serbia guarantees respect for human rights and freedoms to all its citizens, and this is confirmed by certain laws. When it comes to persons deprived of their liberty, the protection of their rights and

³⁹ <https://ipf.rs/prava-lica-lisenih-slobode/>

⁴⁰ Узрок кршења људских права лица лишених слободе или појава дискриминације често може проистећи из незнања лица лишених слободе или оних који поступају са њима, а могу имати и свесни, намерни и систематски карактер.

⁴¹ стр. 1

⁴² Члан 21. Устава Републике Србије („Сл. Гласник РС, бр. 98/2006“)





restrictions is also guaranteed by ratified international treaties, generally accepted rules of international law, and the Law on the Execution of Criminal Sanctions from 2019. Among other things, the last mentioned law states that persons against whom a criminal sanction is executed may be restricted in fundamental rights only to the extent necessary to execute criminal sanctions and in the procedure provided by this law.

In parallel with these international documents, the Criminal Code of the Republic of Serbia provides for the criminal offense of ill-treatment and torture in the following articles:

Article 136 (Extortion of testimony): (1) "An official who in the performance of his service uses force or threat or other impermissible means or impermissible means with the intention of extorting testimony or some other statement from the defendant, witness, expert or other person, shall be punished imprisonment from three months to five years. " (2) "If the extortion of a statement or statement is accompanied by severe violence or if the extorted statement resulted in particularly severe consequences for the defendant in the criminal proceedings, the perpetrator shall be punished by imprisonment for two to ten years."

Article 137 (Abuse and torture): (1) "Whoever abuses another or treats him in a manner which insults human dignity, shall be punished by imprisonment for a term not exceeding one year." (2) "Whoever, by the use of force, threats, or in any other unauthorized manner, inflicts great pain or severe suffering on another with the aim of obtaining confession, testimony or other information from him or a third party, or intimidating or illegally punishing him or a third party, or acts from another motive based on any form of discrimination, shall be punished by imprisonment for a term between six months and five years. "(3) "If the act referred to in para. 1 and 2 of this Article shall be committed by an official in the performance of his duties, he shall be punished for the act referred to in paragraph 1 by imprisonment for a term between three months and three years, and for the act referred to in paragraph 2 with imprisonment for one to eight years. "

In addition to the Criminal Code, the Criminal Procedure Code contains provisions that directly protect human rights, and indirectly the equality contained in Article 3 implies the presumption of innocence and that everyone is presumed innocent until his guilt is determined by a final court decision.⁴³

Article 9 contains a prohibition on torture, inhuman treatment and extortion and states that any use of torture, inhuman and degrading treatment, force, threats, coercion,

⁴³ Члан 3. Законика о кривичном поступку ("Сл. гласник РС", бр. 72/2011, 101/2011, 121/2012, 32/2013, 45/2013 и 55/2014).





deception, medical interventions and other means of influencing free will or extorting confession is prohibited and punishable. any other statement or action from the defendant or other participant in the proceedings.⁴⁴ Restrictions on the freedoms and rights of the defendant in the procedure are contained in Article 10, where it is pointed out that before making a final decision on imposing a criminal sanction, the defendant can be restricted freedoms and rights only to the extent necessary to achieve the purpose of the procedure.⁴⁵ The public prosecutor shall, upon request, submit information on whether an investigation is being conducted only to the court, another public prosecutor or the police, and to the defendant, his defense counsel or the injured party when the conditions prescribed in Article 297 of this Code are met. The language and alphabet in the procedure are defined in Article 11, which states: The Serbian language and the Cyrillic alphabet are in official use in the procedure, and other languages and alphabets in official use are in accordance with the Constitution and the law. The procedure is conducted in the language and script that are in official use in the body of the procedure, in accordance with the law. The parties, witnesses and other persons participating in the proceedings have the right to use their language and script during the proceedings, and if the proceedings are not conducted in their language and if, after instruction on the right to translation, they do not declare that they know the language of the proceedings. leads and to waive the right to translation, they will be provided with the translation of what they or others amount to, as well as the translation of documents and other written evidence. Translation is done by a translator.⁴⁶

A person arrested without a court decision, ie a person arrested on the basis of a court decision who has not been heard, must be handed over without delay, and within 48 hours at the latest, to the competent judge for pre-trial proceedings or, if that does not happen, released.⁴⁷

Illegal evidence cannot be used in criminal proceedings. Illegal evidence is separated from the file, placed in a special sealed envelope and kept with the judge for the preliminary procedure until the final conclusion of the criminal procedure, after which it is destroyed and a record is made. Exceptionally, illegal evidence is kept until the final conclusion of the court proceedings conducted for the purpose of obtaining such evidence.⁴⁸

The defendant is heard orally, with decency and with full respect for his personality. The defendant has the right to use his notes during the interrogation. During the interrogation, the defendant will be enabled to state in an undisturbed statement all the

⁴⁴ *Ibid.*, ЧЛАН 9.

⁴⁵ *Ibid.*, ЧЛАН 10.

⁴⁶ *Ibid.*, ЧЛАН 11.

⁴⁷ *Ibid.*, ЧЛАН 69.

⁴⁸ *Ibid.*, ЧЛАН 84.





circumstances that accuse him and to state all the facts that serve for his defense. When the defendant completes his statement, and the statement needs to be completed or clarified, he will be asked questions that must be clear, specific and understandable, must not contain deception, nor be based on the assumption that he admitted something he did not admit and must not represent leading to an answer. If the later statements of the defendant differ from the earlier ones, and especially if the defendant revokes his confession, the body of procedure may invite him to state the reasons why he gave different statements, ie why he revoked the confession.⁴⁹

If the defendant is deaf, he will be asked questions in writing, if he is mute, he will be invited to answer in writing, and if he is blind, the content of the written evidence will be orally presented to him during the interrogation. If the hearing cannot be conducted in this way, a person who can agree with the defendant will be summoned as an interpreter. If the defendant does not understand the language of the proceedings, he will be asked questions through an interpreter. If the interpreter or translator has not previously been sworn in, he shall take an oath to faithfully convey the questions addressed to the defendant and the statements he will give.⁵⁰

The execution of a prison sentence in Serbia is regulated by the Law on the Execution of Criminal Sanctions, which has been in force since January 1, 2006. years⁵¹, with subsequent amendments from 2009⁵², significant systemic changes in 2014 and current changes and amendments from May 2019.⁵³ Two main reasons influenced the adoption of this law in 2006: the need to harmonize the system of execution of criminal sanctions in the Republic of Serbia with its Constitution and the harmonization of the domestic legal system with international documents that form the framework for protection of human rights and rights in the execution of criminal sanctions.

The strategy for the development of the system of execution of criminal sanctions was to protect society from crime by humane execution of sentences and prevention of restitution. Its mission is to further develop the system of execution of criminal sanctions, with the priority task of protecting society from crime, continuous improvement of the conditions in which criminal sanctions are executed, as well as the application of modern achievements in the treatment of convicts for their successful reintegration into community

⁴⁹ *Ibid.*, Члан 86.

⁵⁰ *Ibid.*, Члан 87.

⁵¹ Закон о извршењу кривичних санкција (Сл. гласник Р. Србије 85/05).

⁵² Донет 31.08.2009. године, ступио на снагу 11.09.2009. године објављен у (Сл. гласнику РС, бр. 72/09) и 2011. године (донет 05.05.2011. године, ступио на снагу 17.05.2011. године, објављен у Сл. гласнику РС, бр. 31/11).

⁵³ Закон о извршењу кривичних санкција (Сл. гласнику РС, бр. 55/14, са изменама и допунама бр. 35/19).





and reducing the rate of return. The main goal of the strategy is a modern system of execution of criminal sanctions as part of a developed and efficient judicial system, which successfully responds to crime and during the execution of criminal sanctions influences the individual to change behavior, acquire new skills and knowledge and successfully integrate into society.

Based on the review of the provisions that regulate the execution of imprisonment within the ZIKS, it can be concluded about the basic features of the execution of criminal sanctions in our country. The position of convicted persons is regulated by the Law on Execution of Criminal Sanctions with the latest amendments from 2019 and the Rulebook on House Rules in Penitentiary Institutions and District Prisons.

The Law on Execution of Criminal Sanctions contains basic provisions on the position of the person against whom the sanction is executed. Article 6 provides that the sanction shall be executed in a manner that guarantees respect for the dignity of the person against whom it is executed. Criminal acts by which the person against whom the sanction is executed is subjected to any form of torture, ill-treatment, humiliation or experimentation are also prohibited. Coercion against the person against whom the sanction is executed is punishable if it is disproportionate to the needs of its execution. Article 7 stipulates that the person against whom the sanction is executed must not be placed in an unequal position due to race, color, sex, language, religion, political and other beliefs, national or social origin, property status, education, social status or another personal property.⁵⁴ These provisions first regulate the right of convicts to human treatment, and that no one may endanger the dignity, physical and mental health of the convict (Articles 6-8). The rights relating to: accommodation, food, clothing, submissions, correspondence, legal aid, visits, stay in special rooms, receipt of packages, receipt of remittances, work, health care, information, education, religious culture, complaints and petitions are stated. and the rights of a convicted woman who has a child, the rights of convicts with special needs to accommodation appropriate to the type and degree of those special needs (Articles 76-101).⁵⁵

The legislator stipulates that the premises in which convicts live and work must be clean, dry, ventilated, heated and sufficiently lit by both natural and artificial light, which enables reading and work without visual disturbances (Article 79).⁵⁶ Dormitories must have 8 cubic meters of space for each convict. A qualitative shift was the introduction of the right to telephone conversation (Art. 88). This improved the convict's communication with the outside world, especially with his family. The work of the convict

⁵⁴ Zakon o izvršenju krivičnih sankcija „Službeni glasnik RS”, broj 85 od 6. X 2005.

⁵⁵ Чланови 76-101. Закона о извршењу кривичних санкција (Сл. гласнику РС, бр. 35/19).

⁵⁶ Члан 79. Закона о извршењу кривичних санкција (Сл. гласнику РС, бр. 35/19).





is an integral part of the treatment program. The purpose of the work is for the convict to acquire, maintain and increase his working abilities, work habits and professional knowledge. Within the execution of the program of actions, the convict is obliged to perform work tasks and obligations. The legislator envisages the acquisition, maintenance and increase of working abilities, work habits and professional knowledge of convicts as the purpose of that work, but in practice the work is oriented towards the needs of the institution, its available production capacities, and often there is high unemployment of convicts. Remuneration for work provided by the legislator is at least 20% of the lowest labor price.⁵⁷

The medical treatment of convicts is prescribed in several provisions of the ZIKS (Article 113 - Article 115). There are no significant deviations from the previous versions of the ZIKS regarding the treatment and health care of convicts, except that forced feeding of convicts is prohibited except in the case when it seriously endangers their health or life (Article 114).⁵⁸ The rights of mothers, rights to information, education, religious rights, complaints and appeals are the same as in the previous ZIKS. The special rights of the convict are regulated by Article 129, they are granted by the warden for good behavior and commitment to the work of convicts, and can be divided into 4 groups: benefits related to correspondence and receipt of shipments, benefits related to visits, benefits related to outings and absences and the right to more suitable accommodation. ZIKS defines more serious and minor disciplinary offenses (Articles 157-158).⁵⁹

In the Republic of Romania, the execution of criminal sanctions is regulated by the Law on the Execution of Sentences and Detention Measures ordered by the judiciary during criminal proceedings (Official Gazette No. 514 of 14 August 2013). The law is structured by structure and chapters, as well as the Law on Execution of Criminal Sanctions of the Republic of Serbia. The law consists of 191 articles. Article 1 emphasizes the legality of the execution of sentences and detention measures, which must be in accordance with the provisions of the Criminal Code, the Code of Criminal Procedure and this law. Article 2 provides the basis for the execution of sentences and detention measures: (1) Punishments and educational measures of deprivation of liberty shall be executed only on the basis of final judgments. (2) Detention shall be carried out only on the basis of the decree by which this measure was pronounced, according to the provisions of the Criminal Procedure Code. (3) House arrest shall be carried out only on the basis of a conclusion ordered by a judge for rights and freedoms, a judge of the previous panel or, depending on

⁵⁷Чланови 6-8, 76, 88, 101. Закона о извршењу кривичних санкција (Сл. гласнику РС, бр. 35/19).

⁵⁸ Члан 114. Закона о извршењу кривичних санкција (Сл. гласнику РС, бр. 35/19).

⁵⁹ Чланови 129,157,158. Закона о извршењу кривичних санкција (Сл. гласнику РС, бр. 35/19).





the case, a court, in accordance with the provisions of the Criminal Procedure Code. (4) Pre-trial detention shall be carried out only on the basis of a pre-trial detention order issued in accordance with the provisions of the Criminal Procedure Code.⁶⁰

The purpose of the execution of sentences and detention measures is contained in Article 3. The purpose of the execution of sentences and educational measures of deprivation of liberty is to prevent the commission of new criminal offenses. The execution of punishments and educational measures of deprivation of liberty will have the goal of forming a correct attitude towards the rule of law, the rules of social coexistence and towards work, in order to reintegrate detainees into the society. For us, Article 4 is important, which guarantees respect for human dignity. Punishments and detention measures shall be carried out in conditions that ensure respect for human dignity. Article 5 prohibits torture, inhuman or degrading treatment or other ill-treatment. (1) It is prohibited to expose any person serving a sentence or other measure of deprivation of liberty to torture, inhuman or degrading treatment or other ill-treatment.⁶¹

There are a number of other acts that regulate the work of the system of execution of criminal sanctions of the Republic of Romania, which directly or indirectly regulate the rights of persons deprived of their liberty:

Law No. 145/2019 on the status of penitentiary police officers; Law no. 351/2018 regarding the financing of the activities of the National Administration of the Institute and subordinate units; Government Decision no. 652/2009 on the organization and functioning of the Ministry of Justice, with subsequent amendments; Government Decision no. 756/2016 for the organization, functioning and attribution of the National Administration of the Institute and for the amendment of the Government Decision no. 652/2009 on the organization and functioning of the Ministry of Justice, with subsequent amendments; Government Decision no. 584/2005 regarding the establishment of special activities and financing of sanitary units from the system of defense, public order and national security, as well as sanitary units from the network of the Ministry of Justice, with subsequent amendments; Order of the Minister of Justice no. 160 / C / 2018 of 8 January 2018 for approval of the Decree on the organization and functioning of the National Administration of the Institute; Order of the Minister of Justice no. 1302 / C / 2017 of 21 April 2017 regarding the composition and attributions of the Technical and Economic Council of the

⁶⁰ Закон о извршењу казни и притворских мера које је судство наложило током кривичног поступка (Службени гласник бр. 514 од 14. августа 2013. године) <http://legislatie.just.ro/Public/DetaliiDocument/150699>

⁶¹ Закон о извршењу казни и притворских мера које је судство наложило током кривичног поступка (Службени гласник бр. 514 од 14. августа 2013. године) <http://legislatie.just.ro/Public/DetaliiDocument/150699>





National Administration of the Institute; Order of the Minister of Justice no. 3936/2017 for approving the Decree on the organization of educational centers and detention centers subordinated to the National Administration of the Institute; Order of the Minister of Justice no. 3725/2017 for approval of the Decree on the organization and functioning of the base for supply, management and repair; Order of the Minister of Justice no. 1548/2017 on approving the Decree on the organization and functioning of the National School for Training for Executors of Criminal Sanctions Targu Ocna, with subsequent amendments; Order of the Minister of Justice no. 1316 / C / 2012 for approval of the Standard regarding technical insurance of motor vehicles of the National Administration of the Institute and subordinate units, with subsequent amendments; By the decision of the Director General of ANP no. 550/2011 on approval of the Decree on the organization and functioning of penitentiary institutions-hospitals, with subsequent amendments; Order of the Minister of Justice no. 2724 / C / 2018 of 10 July 2018 for approval of the Decree on the organization and functioning of the institute, by the Decision of the Director General of ANP no. 543/2012 regarding the approval of return on investment in ANP.⁶²

In 2019, the Republic of Northern Macedonia amended the Law on the Execution of Sanctions, which has 419 members, and, as in Serbia and Romania, Article 5 states that persons against whom sanctions are imposed must be treated in a manner that best suited to their personality. Article 6 The persons against whom sanctions are executed should be treated humanely, with respect for human personality and dignity, preserving their physical and mental health, taking into account the objectives of individual sanctions and measures.⁶³

1.4. Antidiscrimination regulations in Serbia, Romania and Northern Macedonia

The aim of this part of the publication is to summarize and present to the readership for which is intended in one place the anti-discrimination regulations which are of very fragmentary character. The most important anti-discrimination act in legal system of the Republic of Serbia is the Law on Prohibition of Discrimination from 2009 and it is considered an umbrella act which regulates the establishment of the Commissioner for the Protection of Equality. As we analyzed the concept and recognition of discrimination, in the previous part of the paper, following the formulations from the Law of Prohibition of Discrimination, we will not go into analysis in more detail. The Law on Prohibition of Discrimination of the Republic of Serbia has Article 63 that

⁶² <http://anp.gov.ro/despre-anp/legislatie-de-organizare-si-functionare/>

⁶³ <http://www.pravda.gov.mk/Upload/Documents/%D0%97%D0%98%D0%A119.pdf>





consists of nine chapters, the most important for recognizing and responding to discrimination are the chapters relating to general prohibition and forms of discrimination, special cases of discrimination, establishment and work of the Commissioner for Equality commissioner, judicial protection and oversight of law enforcement.

Law no. 202/2002 on Equal Opportunities for Women and Men (Official Gazette of Romania, No. 301 of 8 May 2002) According to this law:

a) direct discrimination means less favorable treatment of a person according to the criteria of sex than has been, or should be, treated of another person in a comparable situation;

b) indirect discrimination means a situation in which provisions, criteria or practices, seemingly neutral, would put people of a certain sex at a certain disadvantage in relation to people of the opposite sex, unless the provision, criterion or practice objectively justifies a legitimate aim and the means to achieve the aim are appropriate and necessary;

c) harassment means any unwanted conduct related to the fact that a person is of one or the other sex, which occurs with the purpose or effect of violating the dignity of the person and creating degrading, intimidating, hostile, degrading insults;

d) sexual harassment is any unwanted behavior - verbal, non-verbal or physical - of a sexual nature, which for the purpose has an effect which has the attainment of personal dignity and / or the creation of a degrading, intimidating, hostile, degrading or offensive environment;

(e) Incentive measures or positive discrimination means those special measures which are provisionally adopted in order to accelerate the effective realization of equal opportunities for women and men and which are not considered acts of discrimination;

f) work of equal value means paid activity which, after comparison, based on the same indicators and units of measurement, with another activity, reflects the use of similar or equal professional knowledge and skills and the submission of equal or similar amount of intellectual and / or physical effort.

The Law on Prevention and Protection against Discrimination of the Republic of Northern Macedonia has Article 53 and was adopted in 2019.

Article 5 of the Law provides for discriminatory grounds: Any discrimination based on race, color, origin is prohibited, (nationality or ethnicity, gender, sex, sexual





orientation, gender identity, belonging to a marginalized group, language, citizenship, social origin, education, religion or belief, political belief, other beliefs, disability, age, marital or marital status, property status, health status, personal status and social status or on any other basis).

Having in mind that these are complementary laws for determining discrimination, we have chosen the Law on Prohibition of Discrimination of the Republic of Serbia.

In Article 2 of the Law on Prohibition of Discrimination of 2009, “discrimination” and “discriminatory treatment” are defined as any unjustified discrimination or unequal treatment, ie omission (exclusion, restriction or giving priority), in relation to persons or groups as well as members of their families, or persons close to them, in an overt or covert manner, based on race, color, ancestry, citizenship, nationality or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, property status, birth, genetic characteristics, health status, disability, marital and family status, conviction, age, appearance, membership in political, trade union and other organizations and other real or assumed personal characteristics. Personal characteristics in the sense of the Law on Prohibition of Discrimination are: race, color, ancestors, citizenship, nationality or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, property status, birth, genetic characteristics, health status, disability, marital and family status, conviction, age, appearance, membership in political, trade union and other organizations. However, the agenda of these traits is not final and it can be expanded, but these are certainly the dominant traits on the basis of which an individual or group is discriminated against. Discrimination can take place in a variety of ways. Some person, due to some of his personal characteristics, is denied a right that is available to others, or a right is limited to him, and others are recognized in full, or the person is.

A very important law for recognizing and responding to discrimination, when it comes to persons with disabilities, is the Law on Prevention of Discrimination against Persons with Disabilities. This law was introduced into legal life in 2006, because it was already then and recognized duty and need of society to prevent and highlight discrimination as an aspect of the lives of persons with disabilities, which they encountered on a daily basis. The Law on Prevention of Discrimination against Persons with Disabilities consists of Article 53, and Article 4 emphasizes the obligation of public authorities to ensure the enjoyment of rights and freedoms by persons with disabilities without discrimination. Article 9 lists severe forms of discrimination, inciting and encouraging inequality or intolerance towards persons with disabilities, propaganda or





deliberate discrimination by public authorities in proceedings before that authority, through the media, in political life, in the provision of public services, in the field of labor relations, education, culture, sports, etc. Article 20 provides for the prohibition of writing and displaying discriminatory messages and symbols in public places and for disseminating in other ways messages and symbols calling for discriminatory treatment of persons with disabilities.⁶⁴ The law specifically indicates the prevention of discrimination against persons with disabilities in several key areas, discrimination in proceedings before public authorities, in relation to associations, discrimination in the provision of services and use of facilities and areas, in relation to health services, discrimination in connection with education, employment and employment, transportation, marital and family relations, discrimination against associations of persons with disabilities.

Measures to promote the equality of persons with disabilities are particularly important. Article 3 of the Law on Gender Equality respects the policy of equal opportunities, which implies equal participation of the sexes in all phases of planning, making and implementing decisions that affect the position of women and men. Discrimination on the grounds of sex is any unjustified discrimination or unequal treatment, or omission (exclusion, restriction or preference) which has the purpose or consequence of making it difficult, endangering, disabling or denying a person or group the recognition, enjoyment or exercise of human rights and freedoms. political, economic, social, cultural, civic, family and other areas.⁶⁵

Discrimination is also considered if a person is unjustifiably treated worse than someone else, exclusively or mainly because he / she has sought or intends to seek legal protection against discrimination or has offered or intends to offer evidence of discriminatory treatment.

Unjustified discrimination, exclusion, restriction and treatment or other measures taken, in terms of this law, shall be considered in particular if:

- 1) the undertaken measure is not justified by a legitimate or legitimate aim;
- 2) there is no proportion between the measures taken and the goal achieved by the measures taken.⁶⁶

⁶⁴ Закон о спречавању дискриминације особа са инвалидитетом, („Сл. гласник РС”, бр.33/2006).

⁶⁵ Закон о равноправности полова („Сл. гласник РС”, бр. 104/2009)

⁶⁶ Ibid., Члан 4.





A particularly important law in terms of achieving the principles of equality and social welfare in society is the Law on Protection of Rights and Freedoms of National Minorities, from the aspect of national security, it is very important to establish and improve good neighborly relations, because strengthening intolerancenational minorities can bethe cause ofwider conflicts, civil unrest, armed rebellions, diversions, sabotage, ethno-separatist terrorism, religious extremism. Article 3 of this law prohibits any form of discrimination, on national, ethnic, racial, linguistic grounds, against persons belonging to national minorities. In practically every important area of life and work, anti-discrimination provisions have been highlighted through certain laws and bylaws, which can be seen in several subsequent laws. Discrimination against a person or group of persons is considered to be any direct or indirect, in an open or covert manner, exclusion or restriction of rights and freedoms, unequal treatment or omission, or unjustified discrimination by favoring or giving priority.Special measures introduced for the purpose of achieving full equality, protection and progress of persons, ie groups of persons who are in an unequal position, shall not be considered discrimination. More detailed criteria for recognizing forms of discrimination by an employee, student or third party in the institution are jointly prescribed by the Minister and the Minister in charge of human rights. Article 45 prohibits violence, abuse and neglect. The following is prohibited in the institution: physical, psychological and social violence; abuse and neglect of children and students; physical punishment and insult of a person, ie sexual abuse of children and students or employees.

Violence and abuse means any form of verbal or non-verbal behavior committed or repeated once that has the effect of actually or potentially endangering the health, development and dignity of the child and student or employee. Neglect and negligence is the failure of an institution or employee to provide conditions for the proper development of the child and student. The institution is obliged to immediately submit a report to the competent authority if the child or student shows signs of violence, abuse or neglect.

Under physical violence, in terms of paragraph 1 of this Article, is considered: physical punishment of children and students by employees and other adults; any conduct that may result in actual or potential bodily injury to a child, student or employee; violent behavior of an employee towards children, students or other employees, as well as students towards other students or employees.

Psychological violence, in the sense of paragraph 1 of this Article, is considered behavior that leads to immediate or permanent threat to the mental and emotional health and dignity of the child and student or employee. Under social violence, in terms of





paragraph 1 of this article is considered the exclusion of children and students from the group of peers and various forms of social activities of the institution. Any form of violence and abuse referred to in paragraph 2 of this Article by a student, his parent, guardian or adult, against a teacher, educator, professional associate and other employees is prohibited in the institution. Due to the violation of the prohibition referred to in paragraph 8 of this Article, a misdemeanor or criminal procedure shall be initiated against the parent, ie guardian of the child or student. The protocol for acting in the institution in response to violence and abuse, the content and methods of carrying out preventive and intervention activities, conditions and ways for risk assessment, ways of protection against violence, abuse and neglect, shall be prescribed by the Minister. The Minister prescribes more detailed conditions on the ways of recognizing non-verbal forms of abuse of children and students by the employee during care, rest and recreation and other forms of educational work.⁶⁷

Article 2 of the Law on Churches and Religious Communities states the prohibition of religious discrimination. No one shall be subjected to coercion that could jeopardize the freedom of religion, nor shall he be compelled to declare his religion and beliefs or their non-existence. No one may be harassed, discriminated against or privileged because of their religious beliefs, belonging to or not belonging to a religious community, participating or not participating in worship and religious rites, and using or not using guaranteed religious freedoms and rights. There is no state religion.⁶⁸

The Labor Law provides for the prohibition of direct and indirect discrimination against job seekers, as well as employees, based on gender, birth, language, race, skin color, age, pregnancy, health condition, disability, nationality, religion, marital status, family obligations, sexual orientation, political or other beliefs, social origin, property status, membership in political organizations, trade unions or any other personal characteristic.⁶⁹

Immediate discrimination, in terms of this law, is any action caused by any of the grounds referred to in Article 18 of this law which puts the person seeking employment, as well as the employee, in a less favorable position compared to other persons in the same or similar situation.

Indirect discrimination, in terms of this law, exists when a certain seemingly neutral provision, criterion or practice puts or would put at a disadvantage in relation to

⁶⁷ *Ibid.*, Члан 45.

⁶⁸ Члан 2. Закона о црквама и верским заједницама („Сл. гласник СР”, бр. 36/2006)

⁶⁹ Члан 18. Закона о раду („Сл. гласник РС”, бр. 24/2005, 61/2005 и 54/2009)





other persons - the person seeking employment, as well as the employee, due to a certain characteristic, status, orientation or belief from Article 18 of this Law. Discrimination under this law is prohibited in relation to: 1) conditions for employment and selection of candidates to perform a certain job; 2) working conditions and all rights from the employment relationship; 3) education, training and advanced training; 4) promotion at work; 5) termination of the employment contract.⁷⁰

Harassment and sexual harassment are prohibited. Harassment, within the meaning of this law, is any unwanted behavior caused by any of the grounds referred to in Article 18 of this law that aims at or violates the dignity of the job seeker, as well as the employee, which causes fear or creates a hostile, degrading or offensive environment. Sexual harassment, within the meaning of this law, is any verbal, non-verbal or physical behavior that aims at or violates the dignity of a job seeker, as well as a full-time employee, which causes fear or creates a hostile, humiliating or offensive environment.⁷¹

It is not considered discrimination to discriminate, exclude or give priority to a particular job when the nature of the work is such or the work is performed in such conditions that the characteristics related to any of the grounds referred to in Article 18 of this Law are a real and decisive condition. that the purpose thus sought to be achieved is justified. Provisions of the law, general act and employment contract relating to special protection and assistance to certain categories of employees, especially those on the protection of disabled persons, women during maternity leave and leave of absence for the purpose of child care, special child care, as well as provisions relating to the special rights of parents, adoptive parents, guardians and custodians - are not considered discrimination.⁷²

In April 2015, the Law on the Use of Sign Language was passed, the aim of which is to equalize opportunities, accessibility and enable the realization of various rights of deaf people, which contributes to the realization of basic principles related to the enjoyment of human rights and non-discrimination. The explanation for the adoption of the Law on the Use of Sign Language states that the full inclusion of all vulnerable groups and the eradication of discriminatory behavior will be achieved, among other things, by exercising the right of every person to express their ideas, thoughts and feelings. If anyone denies this freedom or prescribes a way to deny that freedom, he denies the inalienable human right to communicate.

⁷⁰*Ibid.*, ЧЛАН 20.

⁷¹*Ibid.*, ЧЛАН 21.

⁷²*Ibid.*, ЧЛАН 22.





Article 1 of the Law on Personal Data Protection states that the protection of personal data is provided to every natural person, regardless of citizenship and residence, race, age, sex, language, religion, political and other beliefs, nationality, social origin and status, property status, birth, education, social status or other personal characteristics. Particularly sensitive data are provided for in Article 16, and these are data related to national affiliation, race, gender, language, religion, affiliation with a political party, trade union membership, health status, receipt of social assistance, victim of violence.⁷³

Law on the Protection of the Right to a Trial within a Reasonable Time⁷⁴ was adopted in May 2015. The purpose of this law is to provide judicial protection of the right to a trial within a reasonable time in order to prevent the occurrence of a violation of the right to a trial within a reasonable time. Judicial protection of the right to a trial within a reasonable time includes an investigation conducted by the public prosecutor. All parties to court proceedings, enforcement proceedings, participants in non-litigious proceedings, injured parties in criminal proceedings, private prosecutors and injured parties as plaintiffs have the right to a trial within a reasonable time, if they have filed a property claim.

In May 2015, the Law on Ratification of Protocol No. 15 to the Convention for the Protection of Human Rights and Fundamental Freedoms was adopted. The European Convention for the Protection of Human Rights and Fundamental Freedoms is one of the most important documents guaranteeing rights and freedoms, and prohibits, among other things, discrimination and abuse of rights.

1.5. Media and discrimination in prisons

The media represent an important segment of any modern and democratically organized society, their importance is reflected in the fact that the public should point out the most important topics and problems of society. However, in addition to this role, it often happens that the media with the aim of sensationalist reporting, reporting aimed at selling circulation, publish inadequate texts, especially when it comes to prisons and influence the spread of stereotypes and prejudices regarding detainees and convicts.

⁷³ Закон о заштити података о личности (Службени гласник РС. бр.97/2008).

⁷⁴ Закон о заштити права на суђење у разумном року „Службени гласник РС”, број 40/15.





The need for sensationalist reporting can often have a negative impact on certain vulnerable groups in prisons, members of the Roma national minority, the LGBT population, people living with HIV, and people with intellectual disabilities.

"Reporting on members of the Roma national minority is regularly based on stereotypes. We are witnessing cases when the newspaper does not state the name and surname of the perpetrator of a crime, but emphasizes the nationality, if it is about Roma. There are a number of stereotypes that are often repeated in the media, such as that the Roma are dirty and uninterested in work.⁷⁵

The media in the race to obtain interesting information and gain as many audiences and readers as possible, have always used the interest of citizens in crime and often create their informative content in connection with the latest developments in that field.⁷⁶

Creating myths is done by: 1) creating and using criminal stereotypes; 2) presenting attitudes as facts; 3) concealing one's own views by choosing a sample; 4) using value-colored terminology; 5) selection of presented facts; 6) information management; 7) by referring to anonymous authorities; 8) by referring to facts torn out of context; and 9) selective interviewing.⁷⁷

Prison staff (especially when it comes to crimes that disturb the public and where public interest has increased) may not give lump sum assessments regarding the perpetrator of the crime, who is in custody, his behavior, physical or mental condition, may not talk with persons from the private sphere, they may not provide any information without the official approval of the prison administration.

One of the very important aspects of the fight against discrimination and the achievement of equality is the use of gender-sensitive language in reporting and communication in general. The use of gender-sensitive language in Serbia is becoming more pronounced and covers more and more terms, especially the names of occupations. The Serbian language is clear in that respect - the basic rule of sentence construction says that the subject and the predicate must agree in gender and number, and there are no disagreements. The problem arises with certain terms that seem awkward, difficult to pronounce and confuse, which is what the different policies of media houses in Serbia are

⁷⁵ Дискриминација Рома у медијима: <https://novinar.me>, 20.05.2016.

⁷⁶ С. Вуковић, *Превенција криминала*. Београд: Криминалистичко- полицијска академија, Београд 2010, стр 116.

⁷⁷ Ђ. Игњатовић, *Митологија злочина*, Архив за правне и друштвене науке (1–2). Београд 2004, стр 15.





talking about, where the media that use gender-sensitive language and those who do not use it at all are clearly visible.⁷⁸ It is necessary to carry out the following activities:

1) Promote a code of gender-sensitive reporting in the media. Promote the access of journalists, news associations and newsrooms to the code of gender sensitive media reporting. Encourage journalists to speak and write about women and men in an objective way, avoiding stereotypes and prejudices.

2) Promote non-sexist use of language. Encourage the use of non-sexist and gender-sensitive language in the media. Respect the rules of the Serbian language on matching in gender, number and case; whenever there is a possibility to use the female gender in connection with the professions and occupations performed by women; avoid expressions and terms that are a consequence of gender stereotypes and prejudices; eliminate offensive expressions towards women, and especially towards multiple discriminated groups.⁷⁹

1.6. The connection between the concept of human security of persons deprived of their liberty and the phenomenon of discrimination

Human safety means the protection of fundamental freedoms - freedoms that are the very essence of life. This means protecting people from critical (serious) and penetrating (widespread) threats and situations. This implies the use of processes based on human strength and aspirations. These factors create such political, social, ecological, economic, military and cultural systems that together provide the building blocks for survival, subsistence and a dignified life.⁸⁰ The dimensions of the concept of human security can be represented by a list of sources of insecurity:⁸¹

⁷⁸ Примери медијске употребе родно осетљивих термина у: Т. Skrozza, Далеки, белисвет, 3М магазин, бр. 10, април - јун 2011.

⁷⁹ Истраживање: медији и дискриминација, Повереник за заштиту равноправности, Београд, април 2012, стр. 11-12.

⁸⁰ И. Суботички, Људска безбедност – две студије случаја у Србији, СЕКОНС, Досије студио, Београд 2015, стр. 10.

⁸¹ Центар за истраживање хумане безбедности: <http://www.human-security.info/ocentru.php> 15.05.2016.





-Economic security in prisons - security of their property, unemployment of persons deprived of their liberty, job insecurity, poor working conditions, income inequality;

Rule 67.⁸² All money, valuables and other movables belonging to the prisoner, which according to the prison regulations he is not allowed to keep during admission to the prison, are stored in a safe place. The prisoner signed the inventory list. Steps need to be taken to keep these things in good condition.

Rule 96. Convicted prisoners must have the opportunity to work and / or take part in their rehabilitation provided that a doctor or other qualified medical professional determines their physical and mental ability. It is necessary to ensure a sufficient amount of useful work so that prisoners are actively employed during regular working hours.

Rule 97. Prison work must not be harmful. Prisoners must not be held in slavery or servitude. Prisoners must not be required to work for the personal or private benefit of prison staff.

Rule 98. To the extent possible, the work provided must be such as to maintain or increase the prisoner's ability to earn a fair living after his release from prison. Vocational training in useful occupations must be provided to prisoners who can benefit from it, especially for younger prisoners. Within the limits of the appropriate choice of profession and the institution's administration and working rules, prisoners must be able to choose the type of work they wish to perform.

Rule 99. The organization and methods of work in prisons must be achievable to work outside the prison in order to prepare prisoners for normal working life. However, the interests of prisoners and their vocational education must not be based on purpose of obtaining financial gain from prison activities.

Rule 100. It is preferable that industrial and agricultural activities be managed by the prison administration and not by private contractors. If prisoners perform work not managed by the prison administration, they must always be under the supervision of the prison administration. Unless the work is performed for other state bodies, the persons for whom the work is performed have to pay the prison administration the full amounts of the usual salaries, counting the amount of work performed by the prisoners.

⁸²https://www.irmct.org/sites/default/files/documents/Standardna%20minimalna%20pravila%20Ujedinjenih%20naroda%20za%20postupanje%20sa%20zatvorenicima_Mandela%20rules.pdf





Rule 101. It must apply equally the precautionary measures prescribed for the safety and health of workers at liberty in prisons. Prisoners must be insured from injuries at work, including occupational diseases, under conditions no less favorable than those prescribed by law for employees at liberty.

Rule 102. Law or administrative regulations must prescribe the maximum number of daily and weekly working hours, counting local rules or customs regarding the employment of workers at liberty. Besides to the working hours thus determined, one day of rest per week must be left and enough time for education and other activities.

-Hygiene and safe access to food in prisons:

Mendel's rule 35.⁸³ The doctor or the competent health authority must perform inspections and inform the director or warden of the prison about:

- (a) the quantity, quality, preparation and serving of food;
- (b) the hygiene and cleanliness of the institution and prisoners;
- (c) sanitation, temperature, lighting and ventilation of the prison;
- (d) the suitability and cleanliness of clothing and bedding;
- (e) the application of the rules on physical education and sport where there is no professional technical staff who leads those activities.

-Health security in prisons - threats to health and life due to infectious and parasitic diseases, HIV and other viruses and inadequate access to health services;

Mendel's rule 24-28.⁸⁴ The state provides health care to prisoners. Prisoners must have health care standards that are also available in society, as well as free access to the health services without discrimination based on their legal status. Every prison must have a health service with assessing, monitoring, protecting and improving the physical and mental health of prisoners, considering prisoners with special health needs or health issues that make their rehabilitation difficult. The

⁸³https://www.irmct.org/sites/default/files/documents/Standardna%20minimalna%20pravila%20Ujedinjeni%20naroda%20za%20postupanje%20sa%20zatvorenicima_Mandela%20rules.pdf

⁸⁴https://www.irmct.org/sites/default/files/documents/Standardna%20minimalna%20pravila%20Ujedinjeni%20naroda%20za%20postupanje%20sa%20zatvorenicima_Mandela%20rules.pdf





health service comprises an interdisciplinary team with enough qualified staff and operates with full clinical independence, as well as psychologists, psychiatrists, dentists. The health service prepares and maintains accurate, up-to-date and confidential individual medical documentation of all prisoners, and all prisoners must be provided with access to their medical documentation upon request. A prisoner may appoint a third person to access his or her medical documentation. There must be special accommodation in women's prisons for all necessary prenatal and postnatal health care and treatment. Prisoners with mental health and / or health disorders:

Rule 109. Persons who are found not to be criminally liable or who are subsequently diagnosed with serious mental health problems and / or disorders whose imprisonment would worsen their condition shall not be held in prisons and shall be moved as soon as possible in psychiatric institutions. Depending on the needs, other prisoners with mental difficulties and / or health disorders can be monitored and treated in specialized facilities under the supervision of qualified health workers. The health service must provide psychiatric treatment to all other prisoners who need it.

-Personal security - threats of physical violence by the state and criminal organizations, or within prison:

Rule 50. Laws and regulations governing the search of prisoners and cells must be under their obligations through international law and must consider international standards and norms, bearing in mind the need to ensure security in the prison. Searches must be conducted in such a way as to respect the dignity inherent in every human being and the privacy of the individual being searched, as well as the principles of proportionality, legality and necessity.

Rule 51. Searches must not be used to harass, intimidate or violate the privacy of prisoners. For accountability, the prison administration must keep records of searches, in particular of undressing and cavities and cell searches, as well as the reasons for the searches, the identities of the persons who conducted them and the results of the searches.

Rule 82. Prison staff must not use force in their relations with prisoners except in self-defense or in cases of attempted escape or active or passive resistance to orders based on law or regulations. Prison staff entitled to use force he must not do so to a greater extent than necessary, and he must immediately report the incident to the director of the prison. Prison staff must undergo special physical training that will enable them to overcome aggressive prisoners. Except in special circumstances, prison staff performing duties that bring them into direct contact with prisoners





must not be armed. Personnel must never receive a weapon if they are not trained to use it.

-Security of the prison population - overcrowding, threats of ethnic tensions and violent conflicts;

From the aspect of security risks in the system of execution of criminal sanctions, both in our country and in the world, the following risks may occur: risks of **organizational-architectural nature**: prison overcrowding, inadequate architectural solutions (oversized institutions), insufficiently branched network of specialized institutions, risks from **domain of social security**: strong influence of the informal convict system in large penitentiaries, unfavorable criminological structure of convicts in relation to the types of prisons.

-Political security - threats of state repression and other threats to the human rights of persons deprived of their liberty.

Each of these sources of insecurity at its root can be caused by discrimination deeply rooted in society. The publication "Human Security - Two Case Studies in Serbia" illustrates the connection between human security and discrimination. Human rights are especially mentioned when it comes to unfavorable circumstances for minorities and vulnerable groups in prisons. A culture of intolerance, antagonism and apathy, growing intolerance and increasing conflict are seen as daily possible threats in prisons - prisoners from the ranks of hooligans and right-wing extremist groups are recognized as the main instigators of hatred and violence based on ethnic, sexual or political grounds, as major threats to tolerance and diversity in prisons.

An important item in the training of prison officers must be dedicated to the elimination of prejudice against any ethnic or other group. Prejudices are wrong opinions or beliefs, positive or negative, which are contrary to logical reasoning and based on arbitrary generalization, but which the individual takes from the environment as patterns of his own thinking.⁸⁵ Special work must be done to prevent the creation of prejudices against vulnerable groups in society. The notion of vulnerable groups is given in the collection of practical policy proposals for police reform and is quite broad, conditioned by the space and time in which it is defined.

⁸⁵ С. Флере, *Предрасуде*, Енциклопедија политичке културе, Београд 1993, стр. 927-931.





The authors of the collection of practical policy proposals state that the notion of vulnerable groups when it comes to human rights is such that it refers to groups that often face discriminatory treatment or need special attention to prevent potential violations of their human rights. The special circumstances in which these persons find themselves, lead to the fact that equal treatment of them contributes to their bad position and is unjust. They state that in our country, vulnerable groups can include Roma, women, minors and LGBT people.⁸⁶

The concept of human security, that is the anthropocentric approach in perceiving security issues at the level of prison communities, together with proactive work and the concept of dynamic security in prisons can give good results in adequate recognition and response to discrimination, especially against national minorities and vulnerable groups.

Dynamic security means knowing what is happening around you and creating safe living conditions for people deprived of their liberty and the work of prison staff.⁸⁷ Dynamic security in a prison environment has three basic elements of security: 1) physical (walls, cells or dormitories), bars, fences, gates, lights, video surveillance and alarm system; 2) procedural (conducting, counting, searching prisoners, visitors, staff and internal and external areas, patrolling, unlocking and locking persons deprived of their liberty), and 3) personal relations and attitude towards others, performing the tasks of a competent prison officer.⁸⁸ The four additional elements of dynamic security are:

Good relations between prisoners, staff, services and external law enforcement agencies and all visitors visiting the facility; A constructive regime in which persons deprived of their liberty can learn or improve their social skills, reflect on their behavior and prepare for release; A safe environment that provides personal and general security for convicts to live and staff to work, not forgetting the need to protect the public by imprisoning persons convicted of criminal offenses; Anything that reduces the desire to escape, the need to provide a regime in which we know what is going on at every moment, a safe environment that we provide to the convict in which he can thrive through punishment toward release, giving him useful and purposeful work engagement,

⁸⁶ Збирка предлога практичне политике за реформу полиције у заједници, број. 8, јул 2013, Београдски центар за безбедносно политику, Београдски центар за људска права, Београд, стр. 33.

⁸ Група аутора, Приручник за обуку о додатним способностима затворских службеника са оперативним процедурама, Савет Европе, стр. 45

⁹ Група аутора, Приручник за обуку о додатним способностима затворских службеника са оперативним процедурама, Савет Европе, стр. 46





maintaining family connections and enabling their healthy life during their stay in prison through physical activities and proper nutrition and and finally by encouraging staff to treat convicts with respect and understanding whenever possible.⁸⁹

1.7. Research on discrimination in society and prisons

Problems of discrimination to a greater or lesser extent are present in prisons around the world. Prison sociological studies have conceptualized prison as a social system with its own cultural customs, norms, and expectations — much like society itself. Prison is characterized as a microcosm of society⁹⁰, in which different social relations are established and in which the phenomena of discrimination are not exempt from the phenomena in the general population.

The 2016 publication, *The Color of Justice - Racial and Ethnic Disparity in State Prisons*⁹¹, explores differences in the racial and ethnic composition of the convicted population in the United States⁹². The key finding of this research is that African Americans are imprisoned in state prisons at a rate that is 5 times higher than imprisoned whites. In five states (Iowa, Minnesota, New Jersey, Vermont and Wisconsin), the difference is greater than 10 to 1. In twelve states, more than half of the prison population are blacks: Alabama, Delaware, Georgia, Illinois, Louisiana, Maryland, Michigan, Mississippi, New Jersey, North Carolina, South Carolina and Virginia. Maryland, the prison population makes up 72% of African Americans. In eleven states, at least 1 in 20 adult black males is in prison. In Oklahoma, the state with the highest overall black prison rate, 1 in 15 blacks are men over the age of 18 in prison. States show significant differences in the range of racial differences, from black-white ratios from 12.2: 1 in New Jersey to 2.4: 1 in Hawaii. Latin Americans are closing at a rate that is 1.4 times higher than the rate of whites. Hispanic / white ethnic differences are particularly high in states such as

¹⁰ Група аутора, Приручник за обуку о додатним способностима затворских службеника са оперативним процедурама, Савет Европе, стр. 46

⁹⁰Sykes, G. M. (1958) *The Society of Captives: A Study of a Maximum Security Prison*. Princeton, NJ: Princeton University Press.

⁹¹THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, The Sentencing Project 1705 DeSales Street NW 8th Floor Washington, D.C. 20036

⁹²Neill, K. A., Yusuf, J., & Morris, J.C. (2014). Explaining dimensions of state-level punitiveness in the United States: The roles of social, economic, and cultural factors. *Criminal Justice Policy Review* 26(2):751-772





Massachusetts (4.3: 1), Connecticut (3.9: 1), Pennsylvania (3.3: 1) and New York (3.1: 1)⁹³.

In the research of prison deprivations, the research conducted in 2009 by Jelena ŠpadijerDžinić, Olivera Pavićević and Biljana SimeunovićPatić from the Institute for Criminological and Sociological Research is especially important. In the research, they started from the assumption that prisoners in domestic conditions, ie prisoners in the Department for Convicted Women of the Penitentiary in Požarevac (exposed to similar prison experience as prisoners in other penitentiary institutions and experiencing the same or similar deprivations due to imprisonment). A questionnaire was used in the examination of female prisoners, which measured different types of deprivation using 26 indicators (eg loss of liberty, etc.). Each indicator, ie the statement of the prisoners, was scaled into five categories, so that by coding, a higher score represented a higher degree of feeling of deprivation⁹⁴.

The research within the project "Assessment of the needs of former convicts in the post-penal period" is also realized through three phases. The first phase was a survey conducted in the four largest penitentiaries in Serbia (Penitentiary in Nis, Penitentiary in Sremska Mitrovica, Penitentiary in Pozarevac and Penitentiary for Women in Pozarevac), and whose goal was to obtain data on the needs of former convicted persons in the post-penal period. The survey was conducted in the period September-October 2014. The survey included 547 convicts and 28 employees in these institutions. The sample consisted of 498 male respondents and 49 women. Most respondents were in V1 and V2 treatment (67%), ie in closed treatment, with the least convenience. As many as 56.3% had problems with some of the addiction diseases, and a third of the respondents currently have a health problem. Almost half of the respondents do not have a document (49.9%), which will be valid at the end of the sentence, and more than a third of the respondents (36.5%) will not have financial support since the first days of freedom. There were 40.9% of returnees in the sample, who cited the inability to find a job and lack of finances as the biggest problems during their previous release. Respondents also cited misunderstandings by the environment and discrimination they faced after their release from prison as a major problem. Respondents in most cases said that family and close people were ready to help them when they left (73.4%) and that they were ready to help them accept back and support them (63.9%). 70.4% of them do not expect help from state institutions, and only 15.4% mentioned a state institution that they think can help them. As many as 56.7% expect to be

⁹³THE COLOR OF JUSTICE: RACIAL AND ETHNIC DISPARITY IN STATE PRISONS, The Sentencing Project 1705 DeSales Street NW 8th Floor Washington, D.C. 20036

⁹⁴Jelena Špadijer Džinić, Olivera Pavićević, Biljana Simeunović Patić, Žene u zatvoru – deprivacija osuđeničkog života, Sociologija, Beograd, 2009, str. 228-229.





discriminated against, and 23.6% expect to be rejected from the environment when they are released⁹⁵.

As part of the project "Strengthening the Capacity of Civil Society Organizations in Southeast Europe and Promoting Drug Policies Based on Human Rights and Public Health", supported by the European Commission, the Network for Drug Policies in Southeast Europe launched the research drugs and related vulnerable and marginalized groups. ⁹⁶ The research contained a description of the situation in Southeast Europe through a desk analysis of available research in the region and an analysis of 25 cases of discrimination collected from May to December 2018 in Serbia (AP Kosovo and Metohija), Montenegro, Greece, Albania, Slovenia and Northern Macedonia.⁹⁷

About 60% of respondents state that they asked for a health service but did not get it. When asked who refused to provide them with services, the following were listed: state hospital / institution (7), ambulance (5), police (5), pharmacy (4), prison (4), as well as private practice, NGOs and family . The health service was most often refused by doctors, nurses / technicians, nurses, followed by pharmacists, security guards and hygienists, as well as other medical staff. When asked when and where the health service was denied, some of the answers were: At the dentist in prison; Every time I am hospitalized; It happens at the doctor, in the pharmacy, when I need methadone therapy; In the emergency room, pharmacy, health center, hospital; In a non-governmental organization; At the clinical center, in a couple of city pharmacies since they found out I was using drugs because I was asking for help when I was in crisis; In prison, serving a sentence. None of the respondents who stated that he was not provided with health care services initiated a procedure for protection of rights. One respondent stated: The prison did not want to take my statement. I had to ask the commander, and he refused.⁹⁸

A significant input for the publication is research on discrimination in the general population in the Republic of Serbia, which prompted a research question on discrimination in prisons.

⁹⁵Centar za prevenciju kriminala i postpenalnu pomoć – NEOSTART, Beograd, <http://www.mc.rs>.

⁹⁶BEKER, Kosana, 1972-Diskriminacija osoba koje koriste drogu u jugoistočnoj Evropi / Kosana Beker i Tijana Milošević. -Beograd : Mreža za politike prema drogama u jugoistočnoj Evropi, 2019 (Beograd : Plus). -37 str. <http://dpnsee.org/wp-content/uploads/2019/08/Diskriminacija-osoba-koje-koriste-drogu.pdf>

⁹⁷BEKER, Kosana, 1972-Diskriminacija osoba koje koriste drogu u jugoistočnoj Evropi / Kosana Beker i Tijana Milošević. -Beograd : Mreža za politike prema drogama u jugoistočnoj Evropi, 2019 (Beograd : Plus). -37 str. <http://dpnsee.org/wp-content/uploads/2019/08/Diskriminacija-osoba-koje-koriste-drogu.pdf>

⁹⁸BEKER, Kosana, 1972-Diskriminacija osoba koje koriste drogu u jugoistočnoj Evropi / Kosana Beker i Tijana Milošević. -Beograd : Mreža za politike prema drogama u jugoistočnoj Evropi, 2019 (Beograd : Plus). -37 str. <http://dpnsee.org/wp-content/uploads/2019/08/Diskriminacija-osoba-koje-koriste-drogu.pdf>





The first research: "Citizens' attitudes towards discrimination"⁹⁹ was conducted by the institution of the Commissioner for the Protection of Equality and CeSIDA, during November and December 2012. The methodological framework of the research included a random type and sample size of 1196 citizens older than 15, without Kosovo and Metohija.¹⁰⁰ According to this research, as the most vulnerable group, Roma are convincingly in the first place, which was spontaneously stated by 38% of respondents. This is, however, less (by 7% and 12%, respectively) than in the 2010 and 2009 surveys (45% and 50%, respectively). They are followed by poor people (28%), people with disabilities (22%), the elderly (18%), women (17%) and members of sexual minorities (14%).¹⁰¹ There are two main findings of this research when we talk about regulating discrimination in Serbia and respecting the law:¹⁰² a) a large number of those who do not know that discrimination is prohibited in our country (as many as a fifth) and b) 55% of respondents are aware that legislation exists, but he doubts that it is being applied adequately, he believes that the laws are being applied selectively (which is a slight increase compared to the period two years ago, from 52% to 55%).

Social distance shows that, in all eight examined categories, the greatest distance exists towards LGBT people. Then, according to the scope, a high distance towards HIV-positive people was expressed; this category in seven of the eight degrees occupies a position after people with a different sexual orientation. It is also noticeable that the majority of citizens do not think that ethnic groups, except Roma, are exposed to discrimination in our community.¹⁰³ The highest level of discrimination is suffered by people with mental disabilities, followed by the poor, people with physical disabilities, people living with HIV and the elderly.¹⁰⁴

Research "Attitudes of citizens towards discrimination" from 2013. The public opinion poll was conducted by CeSID, and was conducted in the period between November 21 and 28, 2013 on the territory of the Republic of Serbia, without Kosovo and Metohija. The research was conducted on a representative sample of 1,200 citizens of the Republic of Serbia, without Kosovo and Metohija, older than 15 years.¹⁰⁵ Public opinion

⁹⁹Istraživanje javnog mnjenja, novembar 2012. godine, „Odnos građana prema diskriminaciji u Srbiji“, Cesid, UNDP, Poverenik za zaštitu ravnopravnosti, Beograd, decembar 2012. godine

¹⁰⁰*Ibid.*

¹⁰¹*Ibid.*

¹⁰²*Ibid.*

¹⁰³*Ibid.*

¹⁰⁴*Ibid.*

¹⁰⁵*Однос грађана према дискриминацији у Србији*, Повереник за заштиту равноправности, УНПД, ЦеСИД, 2013. Доступно





research¹⁰⁶ has shown that the greatest predispositions for discrimination exist in relation to LGBT people, members of other ethnic communities and members of minority religious communities.¹⁰⁷ The majority of citizens are of the opinion that the society in which we live is discriminatory, as many as two thirds of the respondents believe that discrimination is present in our country. Citizens estimate that the most discriminated in Serbia are women (42%) and Roma (41.5%), followed by people with disabilities (28.4%), poor people (27%) and the elderly (24.5%), children (18.6%) and members of sexual minorities (16.4%). More than a third of respondents believe that discrimination is most present in employment. The greatest ethnic distance exists towards Albanians, Croats, Bosniaks and Roma, while the greatest social distance is towards the LGBT population and people living with HIV. It is worrying in this research that almost half of the respondents believe that discriminated groups are responsible for their position, as well as that "tolerance of diversity has gone to the other extreme and that now members of minorities (ethnic, sexual) have more rights than the majority population."¹⁰⁸

A survey of police officers' attitudes towards discrimination¹⁰⁹ conducted in 2014¹¹⁰ showed that 92% of respondents believe that all citizens deserve equal treatment in the application of the law, regardless of their affiliation or orientation, and that 79% believe that discrimination is present in society. Respondents believe that Roma and the LGBT population are the most discriminated against. The most pronounced social distance is towards members of the LGBT population and people living with HIV, and the greatest

на: <http://www.ravnopravnost.gov.rs/sr/istra%C5%BEivanja/istra%C5%BEivanje-javnog-mnenja-odnos-gra%C4%91ana-prema-diskriminaciji-u-srbiji>

¹⁰⁶*Ibid.*

¹⁰⁷Чак 49% испитаних слаже сесатврдњом да је хомосексуализам болест коју треба лечити, 38% сеслаже сатврдњом да нормалан човек призна је самотрадиционалне вере, а 35% да мале верске заједнице „краду“ душу људима

¹⁰⁸Istraživanje javnog mnjenja, novembar 2013. godine, „Odnos građana prema diskriminaciji u Srbiji“, Cesid, UNDP, Poverenik za zaštitu ravnopravnosti, Beograd, 2013. godine

¹⁰⁹Предмет овог истраживања су ставови припадника криминалистичке полиције РС о основним појавним облицима дискриминације, а основни циљ истраживања је идентификација перцепције и ставова припадника криминалистичке полиције РС према дискриминацији. Цело истраживање објављено је у публикацији *Сузбијање дискриминације у Републици Србији – с посебним освртом на улогу и допринос Министарства унутрашњих послова РС*, Радослав Зекавица, Канцеларија за људска и мањинска права, Београд, 2014, доступно на: Izvor: Prof. dr Radomir Zekavica, Kriminalisticko-policijska akademija Beograd: http://www.ljudskaprava.gov.rs/images/pdf/eu/Radomir_Zekavica.pdf 16.10.2016.

¹¹⁰Канцеларија за људска и мањинска права и Повереник за заштиту равноправности заједнички су спровели истраживање ставова полицијских службеника о дискриминацији у оквиру пројекта „Спровођење антидискриминационих политика у Републици Србији“ (програм ИПА 2011), који је финансирала Европска унија.





ethnic distance exists in relation to Albanians. On the other hand, research has shown that the smallest social distance exists towards poor people, people with physical disabilities and refugees, because police officers consider these groups to be at a disadvantage compared to other citizens.¹¹¹

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European Convention for the prevention of Torture and Inhuman or Degrading Treatment or Punishment, Committee of Ministers of the Council of Europe, Strasbourg, 1987., преузетп дана 30.04.2016., <http://www.cpt.coe.int/en/documents/ecpt.htm>

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Узрок кршења људских права лица лишених слободе или појава дискриминације често може проистећи из незнања лица лишених слободе или оних који поступају са њима, а могу имати и свесни, намерни и систематски карактер.

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CHAPTER II

2. PRINCIPLES OF OPERATIONAL WORK AND MECHANISMS OF RECOGNITION AND RESPONSE TO DISCRIMINATION

Author: Martin Matijašević

2.1. The system of execution of criminal sanctions in Serbia, Northern Macedonia and Romania

With the exception of the old and middle ages, in which the system of punishment was based on revenge, imprisonment, indiscriminate use of corporal punishment and death, in its current form, prison is a relatively modern legal institution, which has existed for less than 300 years.¹¹² It has its roots in the northeastern United States and Western Europe, and then spread around the world, often in the wake of colonial expansion¹¹³

There are several classical types of penitentiary systems in the history of prison facilities: the joint prison system, the cell prison system (Philadelphia and Auburn), the progressive or mixed prison system (English progressive, Irish progressive, Mokonoki scoring system and classification system).¹¹⁴

The system of joint imprisonment was aimed at the exclusion of perpetrators of criminal acts from society, and the basic characteristics of the original joint prisons are the lack of elementary classification, inhumane treatment of prisoners and above all, inhumane conditions in terms of minimum hygienic and physiological survival.¹¹⁵ All criminals were accommodated without any criteria, so convicts, juveniles and the elderly were subjected to torture and guards and convicts, especially because the living conditions were desperate¹¹⁶

The cell system or system of isolation, also called the Philadelphia or Pennsylvania system, according to the countries in which it occurred, means that convicts serve the entire sentence of imprisonment separately in cells, thus avoiding the biggest

¹¹² Morris, Norval, and David J. Rothman, eds. *The Oxford history of the prison: The practice of punishment in Western society*. Oxford University Press, USA, 1997.

¹¹³ Coyle, Andrew. *Understanding prisons*. Open University Press, 2005.

¹¹⁴ Константиновић-Вилић, С., Костић, М., *Пенологија*, Центар за публикације Правног факултета, Ниш, 2011, стр. 136-137.

¹¹⁵ Купчевић-Млађеновић, Р., *Основи пенологије*, Свјетлост, Сарајево, 1972, стр. 94-95.

¹¹⁶ Златко Николић, *Основи пенологије са системом извршења кривичних санкција – приручник за полагање стручних испита у извршењу кривичних санкција*, Ј.Р. Браћа, Београд, 1996, стр. 43-44.





drawback of a common prison - a criminal infection.¹¹⁷ The essence of this cellular system is, as its name suggests, the complete separation of convicts in separate rooms, day and night, that is, for the entire period of serving the sentence. The consequences of the rigid cellular system of serving the sentence were catastrophic for the mental health of the convicts.¹¹⁸ Oburnski or the system of silence had the following characteristics: "During the meal, the convicts sat with their backs to each other. When they stood up, their eyes had to be lowered, and their hands folded in order to reduce the possibility of communication to a minimum. During the walks, they had to keep their distance with their eyes fixed on the ground. Hats with a lowered brim were placed on their heads to see the very narrow space around them. Even during religious ceremonies, prisoners sat in separate benches. The Auburn prison was run by Captain Elam Linds, who believed that the Reformation could not yield any results until the spirit of the prisoners was broken."¹¹⁹

The progressive (mixed) prison system sought to overcome the negative characteristics of previous systems. According to this system, convicted persons go through three stages: the stage of cell imprisonment, the stage of joint imprisonment and the stage of conditional release. The length of individual stages depends on the type and length of the sentence and the conduct of the convicted persons..¹²⁰ There are other forms of the progressive system (scoring system and classification system), but for us the most important is the Irish system. The Irish progressive system in the literature is often treated as a more perfect form compared to the English progressive system, based on the principle of grading the sentence, but deviates from the pure progressive system because after joint imprisonment, and before parole, provides that the convict must spend some time in special institution, where he enjoys greater freedom and the right to freer contacts with the outside world.¹²¹

As a more practical and resilient system, the Irish system was quickly adopted and applied in many countries (Italy, France, Switzerland, Denmark, the Nordic countries, Hungary, Romania, the former Kingdom of SCS / Yugoslavia, FNTY-SFRY Yugoslavia),

¹¹⁷ Оливера Мијалковић, Казна затвора-пенолошки аспект-мастер рад, Универзитет у Нишу, Правни факултет, Ниш, 2016, стр. 5.

¹¹⁸ Златко Николић, Основи пенологије са системом извршења кривичних санкција – приручник за полагање стручних испита у извршењу кривичних санкција, Ј.Р. Браћа, Београд, 1996, стр. 45-45.

¹¹⁹ Димовски Д., *Појава и развој казне лишења слободе*, Зборник радова правног факултета у Нишу, Универзитет у Нишу – Правни факултет, 2008.

¹²⁰ Оливера Мијалковић, Казна затвора-пенолошки аспект-мастер рад, Универзитет у Нишу, Правни факултет, Ниш, 2016, стр. 7.

¹²¹ Оливера Мијалковић, Казна затвора-пенолошки аспект-мастер рад, Универзитет у Нишу, Правни факултет, Ниш, 2016, стр. 8.





and even today it is minor or major modifications, the prevailing system of execution of imprisonment.¹²²

Today in the Republic of Serbia, according to the Law on Execution of Criminal Sanctions, the execution of a prison sentence is carried out, organized and supervised by a single central institution called the Directorate for the Execution of Criminal Sanctions. It is organizationally part of the Ministry of Justice of the Republic of Serbia. The Directorate for Execution of Criminal Sanctions organizes, implements and supervises the execution of imprisonment, juvenile imprisonment, security measures of obligatory psychiatric treatment and keeping in a health institution and obligatory treatment of alcoholics and drug addicts, as well as educational measures of sending to a correctional facility.

The structure of the system of execution of criminal sanctions is such that in addition to the Administration for Execution of Criminal Sanctions and its organizational units at the UICS headquarters, it consists of 29 institutions, namely nine Penitentiary Institutions in: Pancevo, Pozarevac, Sremska Mitrovica, Nis, Valjevo, Cuprija, Šabac, Sombor and Padinska Skela, then the Penitentiary-Correctional Institution for Women in Požarevac, the Educational-Correctional Home in Kruševac, the Special Prison Hospital in Belgrade, as from 16 District Prisons in: Belgrade, Novi Sad, Leskovac, Cacak, Zrenjanin, Subotica, Vranje, Kragujevac, Kraljevo, Krusevac, Prokuplje, Uzice, Zajecar, Novi Pazar, Negotin and Smederevo. The Law on Execution of Criminal Sanctions established as an institution: the Center for Training of Employees in the Administration for Execution of Criminal Sanctions.¹²³

The system of execution of criminal sanctions in Romania was established by Law no. 254 of 19 July 2013 on the execution of sentences and measures involving deprivation of liberty ordered by judicial authorities during criminal proceedings, as amended by Law no. 169 of 2017, which amends and supplements several articles of the old law. The main provisions of this law are presented below.¹²⁴

The purpose of the execution of criminal sanctions and educational measures of deprivation of liberty is to prevent the commission of new criminal offenses, to form correct behavior in terms of the rule of law, rules of social life and work, with regard to reintegration into society of detainees or prisoners. Penalties and detention measures shall be carried out in conditions which ensure respect for human dignity. The law also prohibits discrimination. During detention, prisoners shall exercise all civil and political rights,

¹²² Оливера Мијалковић, Казна затвора-пенолошки аспект-мастер рад, Универзитет у Нишу, Правни факултет, Ниш, 2016, стр. 8.

¹²³ Стратегија развоја система извршења кривичних санкција у Републици Србији до 2020. године ("Службени гласник РС", број 114 од 23. децембра 2013).

¹²⁴ Monitorul Oficial nr.514 din 14 august 2013, (2013), LEGE nr. 254 din 19 iulie 2013 privind executarea pedepselor și a măsurilor privative de libertate dispuse de organele judiciare în cursul procesului penal





except those prohibited by law in a judgment imposing a final sentence, as well as those whose restricted exercise stems from the very nature of deprivation of liberty or for reasons of maintaining the security of detention. In each detention facility, there is a judge in charge of supervising deprivation of liberty and controlling the legality of prison sentences and deprivation of liberty measures, as well as performing duties established by law. Detainees may appeal to this judge. Prison execution regimes: maximum security regime, closed system, semi-open regime and open regime. Prison execution regimes are based on a progressive and regressive system, and the regime of prisoners can change from one regime to another during detention.¹²⁵

The main rights of prisoners are: the right to food, clothing, bedding and minimum accommodation conditions, the right to receive, buy and keep goods, the right to daily walks, the right to telephone calls, the right to marry, the right to diplomatic assistance, the right to vote, the right to rest and weekly rest, the right to work, the right to education, the right to legal aid, the right to information, the right to medical assistance, treatment and health care, the right to visit and the right to be informed about special family circumstances and private visits, the right to inspect personal documents, access to legal provisions and documents related to the execution of prison sentences, freedom of conscience and opinion, as and the freedom of religion of convicted persons cannot be restricted.¹²⁶

Also for the purpose of social reintegration, prisoners can benefit from educational activities, psychological assistance and social assistance, schooling. Prisoners can receive rewards such as: deleting a previously imposed disciplinary sanction, adding more internet conversations, packages, visits and marital visits, permission to leave the penitentiary for one day but not more than 15 days a year, permission to leave the penitentiary for a maximum period of 5 days, but not more than 25 days a year and is allowed to go out from prison for a period of 10 days, but not more than 30 days a year. Sanctions that can be applied in case of committing disciplinary offenses are: warning, suspension of the right to participate in cultural, artistic and sports activities for a maximum of one month, suspension of the right to work, for a maximum period of one month, suspension of the right to admission and purchase of goods, except those necessary for individual hygiene or exercising the right to defense, petition, correspondence and medical

¹²⁵ Monitorul Oficial nr.514 din 14 august 2013, (2013), LEGE nr. 254 din 19 iulie 2013 privind executarea pedepselor și a măsurilor privative de libertate dispuse de organele judiciare în cursul procesului penal

¹²⁶ Monitorul Oficial nr.514 din 14 august 2013, (2013), LEGE nr. 254 din 19 iulie 2013 privind executarea pedepselor și a măsurilor privative de libertate dispuse de organele judiciare în cursul procesului penal





care, for a period not exceeding two months, suspension of the right to receive a visit, for a maximum of 3 months and isolation for a maximum of 10 days.¹²⁷

During the execution of the sentence, prisoners may work for the penitentiary or for other users, private companies or public institutions. When they work for an external user, they receive income for their work, which is done in accordance with the contract and labor legislation. The benefits that prisoners have are a reduction in the duration of the prison sentence, for a certain number of days according to the hours worked, also, for each completed school year or completed qualification course, the time of detention of prisoners will be reduced.

In the case of minors and young people (18-21 years old), the court may order the execution of educational measures of deprivation of liberty. Detention measures can be carried out in an education center or in a detention center. The regimes for the execution of the educational measure of internment in the detention center are closed regime or open regime.¹²⁸

The public institution with a legal entity, subordinated to the Ministry of Justice, which coordinates and controls the work of penitentiary institutions, detention and educational centers, is the National Administration for the Execution of Criminal Sanctions.¹²⁹ This administration is a public institution of national interest, with legal personality, subordinated to the Ministry of Justice and is part of the public institutions of defense, public order and national security of the state. The activities of the National Prison Administration are carried out in accordance with the provisions of the Romanian Constitution, the Universal Declaration of Human Rights, the Charter of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms and the European Rules for the Treatment of Detainees. The National Prison Administration is implementing the Romanian government's strategy regarding the execution of sentences and detention measures imposed by the courts.

The National Administration for the Execution of Criminal Sanctions contributes to the provision of defense, public order and peace and security by organizing the custody, monitoring, monitoring, supervision and implementation of the regime of execution of sentences and detention measures carried out in pre-trial detention centers and wards. preventive arrest, by organizing activities for the social reintegration of detainees, detainees and investigative detainees, as well as activities for the prevention of crime and terrorism in the criminal environment, carried out in accordance with the law. The

¹²⁷ Monitorul Oficial nr.514 din 14 august 2013, (2013), LEGE nr. 254 din 19 iulie 2013 privind executarea pedepselor și a măsurilor privative de libertate dispuse de organele judiciare în cursul procesului penal

¹²⁸ Monitorul Oficial nr.514 din 14 august 2013, (2013), LEGE nr. 254 din 19 iulie 2013 privind executarea pedepselor și a măsurilor privative de libertate dispuse de organele judiciare în cursul procesului penal

¹²⁹ Administrația Națională a Penitenciarelor, <http://anp.gov.ro/> available on 10.03.2021





activities of the National Administration for the Execution of Criminal Sanctions and Subordinate Units are coordinated by the Minister of Justice¹³⁰

Currently in Romania there are: 40 penitentiaries (5 are hospitals), 2 detention centers, 2 educational centers. In some institutions, there are also special departments for preventive arrest, by the decision of the Director General of the National Administration for the Execution of Institutions. The total number of prisoners in Romania according to the data of the National Administration from March 10, 2021. amounted to 22073 prisoners.¹³¹

In the Republic of Northern Macedonia, the authority over the execution of criminal sanctions is also within the Ministry of Justice, the Directorate for the Execution of Sanctions. The manner of organization of the Administration for Execution of Sanctions is complementary to the system of execution of criminal sanctions of the Republic of Serbia. At the head of the Administration for the Execution of Sanctions is the director, within the administration itself there is a network of penitentiary (homes and prisons) and correctional institutions. Idrizovo Penitentiary, Open Department in Veles, Stip Penitentiary, Struga Open Correctional Facility, Bitola Prison, Gevgelija Prison, Kumanovo-Open Department Kriva Palanka Prison, Ohrid Prison, Prilep Prison, Strumica Prison, Tetovo Prison and correctional facilities in Tetovo and Skopje.¹³² The prison police is in charge of the security of the institutions for the execution of criminal sanctions.

Analyzing the functioning of the system of execution of criminal sanctions, this publication is also useful for employees in other European countries, especially the countries of the region, because the *acquis* of the joint state of SFRY influenced approximately the same way of organizing and functioning of the prison system. The differences are symbolic or terminological in nature, in terms of the qualification of certain measures and actions.

¹³⁰ <http://anp.gov.ro/despre-anp/organizare/>

¹³¹ Administrația Națională a Penitenciarelor, <http://anp.gov.ro/> available on 10.03.2021

¹³² https://www.pravda.gov.mk/Upload/Documents/Neoficijalen_precisten_tekst_ZIS_reduced.pdf





2.2. The concept and characteristics of the authority of security officers in prisons in Serbia, Romania and Northern Macedonia

Security service¹³³ in Serbia or the prison police in Romania and Northern Macedonia,¹³⁴ for a single formation of the system of execution of criminal sanctions, takes care of the safety of people and property in the institution, conducts convicted and detained persons, participates in determining and implementing the program of treatment of convicts and performs other tasks determined by law. In Romania, its work is regulated by a special law¹³⁵ no. 145/2019 on the status of penitentiary police officers. Article 3 provides for the special status of a prison police officer, which is granted according to the nature of his duties, which include special duties and risks. In the performance of his duties, the criminal police officer is limited in the exercise of public authority, within the limits of the competencies established by law. In the execution of guard, escort, surveillance and intervention missions, as well as in other justified situations, the criminal police officer may use, in accordance with the law, the provided equipment, means and weapons.¹³⁶

In the Republic of Serbia, the security service is organized hierarchically and has several levels of management (supervisors, commanders), while in Northern Macedonia it is organized through management levels (first, second, third and fourth) in the prison police and types (managerial, professional) and auxiliary professional) with relatively similar titles.¹³⁷ In Romania, prison police officers are divided into two categories in relation to the minimum level of education required:

a) category of officers - includes criminal police officers with higher education, who graduated from accredited institutions, in accordance with the law; b) category of agents - includes penitentiary police officers with high school studies with a high school diploma.¹³⁸

¹³³ Постојање правосудне полиције показало се делотворним у многим европским земљама. Јавни тужилац у Швајцарској је истовремено и шеф правосудне полиције. У Белгији су поједини делови полиције у саставу јавног тужилаштва. У Француској постоји правосудна полиција, а у Шпанији је полиција одговорна тужиоцу за откривање кривичних дела и прикупљање доказа. У Италији су поједине полицијске јединице под непосредном командом старешине тужилаштва, док је затворска полиција једна грана државне полиције. У земљама у окружењу пракса је веома различита. У Хрватској и Словенији постоји правосудна полиција као део система извршења кривичних санкција. У Босни и Херцеговини и Републици Српској постоји судска и затворска полиција. Систем извршења кривичних санкција у Републици Италији.

¹³⁴ https://www.pravda.gov.mk/Upload/Documents/Neoficijalen_precisten_tekst_ZIS_reduced.pdf

¹³⁵ [Legea nr.145/2019 privind statutul politistilor de penitenciare:](#)

¹³⁶ <http://legislatie.just.ro/Public/DetaliiDocument/216681>

¹³⁷ https://www.pravda.gov.mk/Upload/Documents/Neoficijalen_precisten_tekst_ZIS_reduced.pdf

¹³⁸ <http://legislatie.just.ro/Public/DetaliiDocument/216681>





The categories of prison police officers are broken down according to professional assessment as follows: Chief Quaestor of the Penitentiary police, Deputy Chief Quaestor of the Penitentiary Police, Main Quaestor of the Penitentiary Police, Quaestor of the Penitentiary Police, Chief Commissioner of the Penitentiary Police, Commissioner of the Penitentiary Police.¹³⁹

The Security Service in Serbia or the prison police in Romania and Northern Macedonia escort convicted and detained persons in official vehicles equipped with devices for giving special light and sound signals, prescribed ventilation and lighting. Members of the service have the status of an authorized official and are authorized to carry weapons, inspect premises in the institution with search, examination of persons with search and examination of bodies, except inspection of body openings, performed by a health worker, apply measures to maintain order and safety in the institution and perform other tasks determined by law.

The Security Service in Serbia or the prison / prison police in Romania and Northern Macedonia are implementing preparations and a contingency plan or state of emergency. Special units composed of members of the security service and employees of other services may be formed to act in emergency situations or during a state of emergency. This service can use service dogs to find narcotics or psychoactive substances, as well as explosives or devices. During the execution of the prison sentence, the convict is obliged to act in accordance with the law and regulations issued on the basis of the law, as well as on the orders of officials, unless the execution of the order would be illegal. In order to maintain order and security in the institution, only those measures for maintaining order and security that are determined by the law on execution of criminal sanctions and regulations adopted on the basis of this law and only to the extent necessary are applied to the convict.

The Security Service in Serbia or the prison / prison police in Romania and Northern Macedonia shall be organized in such a way as to ensure the efficient performance of its duties and tasks. Depending on the size and type of institution in the surrounding countries, it is mainly organized through: duty service, external security, internal security, escort service and a special unit.¹⁴⁰ The service in Serbia is managed by the head of the security service,¹⁴¹ in accordance with the Law on the Execution of Criminal Sanctions, in Romania the Chief Inspector and in Northern Macedonia the Commander. A member of the security service performs duties in the security service on

¹³⁹ <http://legislatie.just.ro/Public/DetaliiDocument/216681>

¹⁴⁰ Члан 2. Правилника о начину обављања послова у служби за обезбеђење у заводима за извршење кривичних санкција "Службени гласник РС", бр. 21 од 4. марта 2016, 104 од 23. децембра 2016.

¹⁴¹ Члан 3. Правилника о начину обављања послова у служби за обезбеђење у заводима за извршење кривичних санкција "Службени гласник РС", бр. 21 од 4. марта 2016, 104 од 23. децембра 2016.





the basis of the Law and other regulations, as well as on the basis of written orders of the director of the Directorate for Execution of Criminal Sanctions, orders of the director of the institution, chief of the security service and other members of the security service. jobs in the security service.¹⁴²

Weapons and equipment of the Security Service¹⁴³ or prison police is a formal people's police system of public security, while the only armament and preparation is an adapted system of execution of criminal sanctions. The armament of the members of the Alliance Service is disarmed weapons appropriate to ammunition and chemical means.

2.3. Proactive approach in solving the problem of discrimination

The main goals of punishing criminals are to prevent socially dangerous activities, to prevent the perpetrator from committing a crime and to correct it. This would reject the society's revenge against the perpetrator of the crime as the goal of the punishment. Also, the treatment of convicted persons determined by the goals of punishment is based on the understanding that humane treatment of convicts maintains order and peace in prisons and achieves better results in post-prison treatment. The goal of punishing offenders is their resocialization, which will be achieved through re-education as the most adequate way of acting. Re-education is therefore a process of changing and forming the attitudes and behavior of convicted offenders, the goal of which is their resocialization and reintegration into the social community. The goal of re-education is the resocialization of criminals.¹⁴⁴

The period from the arrival of the convict to serve his sentence until his active involvement in various forms of re-educational work is filled with certain stages and activities. It should only be noted for information that a specific activity of admission of a convict is carried out, his stay in the examination unit until the classification of persons into educational groups, assignment to the workplace and classification into a certain status group. Only after properly performed procedures, the manager of the institution will make a decision on the further movement of the person serving the sentence.¹⁴⁵

¹⁴²Члан 4. Правилника о начину обављања послова у служби за обезбеђење у заводима за извршење кривичних санкција"Службени гласник РС", бр. 21 од 4. марта 2016, 104 од 23. децембра 2016.

¹⁴³ Члан 29. Правилника о униформи, ознакама, наоружању, специјалним возилима и другој опреми у Служби за обезбеђење у Управи за извршење кривичних санкција"Службени гласник РС", бр. 29 од 18. марта 2016, 74 од 2. септембра 2016, 3 од 18. јануара 2017, 89 од 4. октобра 2017.

¹⁴⁴ <http://penoloska.ac.gov.rs/literatura.html#psihologija>

¹⁴⁵ <http://penoloska.ac.gov.rs/literatura.html#psihologija>





Persons deprived of their liberty shall be provided with security, health care, hygiene, accommodation (light, ventilation) and appropriate conditions for rest and nutrition, in accordance with the conditions established for these persons. In accordance with the law, persons deprived of their liberty shall be provided that third parties of their choice shall be notified of their deprivation of liberty, shall have access to legal aid and shall be examined by a doctor, where possible, of their choice. Persons deprived of liberty are separated from other persons, and women and men deprived of liberty, as well as minors and adults deprived of liberty are separated from each other.¹⁴⁶

In their work, officials are guided by the principle of impartiality in the enforcement of the law, regardless of national or ethnic origin, race, language and social status of the person to whom the law is to be applied, his political, religious and philosophical beliefs, or his age, marital status, gender, or any physical or mental defect. In performing their duties, security officers treat persons deprived of their liberty politely and responsibly. In communication with them, they respect the human person and dignity and preserve the reputation of the Ministry and the Administration. Training is an integral part of the training of security officers.

Security officers perform their duties by adhering to the rule of law, supporting the rule of law, protecting the rule of law and its institutions, and ensuring the exercise of human rights and freedoms in accordance with the Constitution and the Universal Declaration of Human Rights and other international legal instruments. persons deprived of their liberty which the Republic of Serbia has undertaken to apply.¹⁴⁷ Within the scope of his work, whenever possible, the security officer undertakes all necessary measures and activities that will enable persons deprived of their liberty to freely and efficiently exercise their rights, obligations and interests, as well as in cooperation with treatment officers. The tasks for which he is in charge should be performed professionally according to the rules of the profession, conscientiously, impartially and disciplined..¹⁴⁸

In terms of ethics, in all its interventions (actions, operations), the Security Service respects everyone's right to life.¹⁴⁹ No one shall be permitted to order, commit, provoke or tolerate torture or any other cruel, inhuman or degrading treatment or punishment, or any other act that endangers the right to life, liberty, security of person, respect for privacy or any other right or freedom guaranteed. provisions of the European Convention.¹⁵⁰

¹⁴⁶ *Ibid.*, Члан 43.

¹⁴⁷ *Ibid.*, Члан 38.

¹⁴⁸ *Ibid.*, Члан 39.

¹⁴⁹ Члан 33. Кодекса полицијске етике (Службени гласник РС. Бр. 92/2006).

¹⁵⁰ *Ibid.*, Члан 34.





According to the convict, when there is a danger of escape, violent behavior, self-harm or endangering the order and security of another kind, which cannot be eliminated in any other way, special measures may be exceptionally ordered. Special measures are: increased surveillance, seizure and temporary detention of items whose possession is otherwise allowed, accommodation in a specially secured room without dangerous items, accommodation under increased surveillance, solitude, testing for infectious diseases or psychoactive substances. The application of the special measure is determined by the director of the institution or a person authorized by him. According to the convict, it is possible to apply several special measures at the same time.

In the application of measures for maintaining order and security, we must not apply a stricter measure than necessary, given the circumstances of its application and the content of the measure. A member of the security service takes action without delay to prevent the convict from escaping. A member of the security service immediately informs the director of the institution about every attempt to escape and the escape of the convict, who is obliged to inform the director of the Administration. In case of escape of the convict, the warden of the institution informs the police and the court that sent him to serve the prison sentence, orders the issuance of a warrant and takes other actions that are necessary to deprive the escaped convict.

Physical force used in deprivation of liberty, unless absolutely necessary for the conduct of a person, infringes human dignity and as such constitutes a violation of a right defined in Article 3 of the European Convention. The court starts from the position that e.g. in the case of resistance to arrest, attempted escape, or attack on an official or other prisoner, the use of force by members of the police or prison staff is inevitable, but its form and intensity must be proportionate to the nature and severity of the resistance or threat. Thus, only the force that is necessary can be used. In the case of *Ribitsch v. Austria*, the court held that it must be unequivocally established that the violations had been inflicted in the manner alleged by the applicant, i.e. that they are the result of physical force, applied during an arrest or imprisonment, where medical evidence is of prevalent importance. In the present case, the court classified the physical violence to which the applicant had been subjected as inhuman and degrading treatment.¹⁵¹

The use of means of coercion, and especially the use of weapons, is resorted to by security officers only in cases and under the conditions provided by law and other regulations, without applying greater coercion than necessary, and only when absolutely

¹⁵¹ Милица Станојевић, Права лица лишених слободе-мастер рад, Правни факултет, Универзитет у Нишу, Ниш, 2016, стр 20





necessary and to the extent dictated by a legitimate goal. An official who would be present at a prohibited activity is obliged to point out such a case to his superior.¹⁵²

During the search of convicted persons, security officers are obliged to inform the person about the reasons for the search, as well as to verbally explain each of their actions (for example, now open your mouth, raise your hands, etc.), two members of the security service searches must be conducted by persons of the same sex as the person being searched, persons of different sexes must not be present during the search, the room must provide privacy and cannot be covered by video surveillance, a record shall be made of each search, whose copy was received by the convicted person, and during the search of accommodation and other premises, the presence of at least two witnesses is provided, during the search of accommodation of convicts it is desirable to perform the action using a video camera, which records the course of search which guarantees the legal security of convicted persons, but also the security of the conduct of the action and the reliability of the collected evidence. Proactive approach to the use of coercive means:¹⁵³

- Without exceptions, keep all records on the use of coercive measures against persons deprived of their liberty, as well as reporting to the competent ministry and the prosecutor's office.
- Obligatory person deprived of liberty according to whom the measure of coercion was applied to take to the nearest medical institution or, depending on the type of injury, to the nearest medical institution. It is not acceptable for this action to be performed by the same security officers who used coercive measures, but to provide other members of the security service with medical escort.
- Provide the person deprived of liberty over whom coercive measures have been applied to declare himself in writing, provide him with a copy of the statement and a copy of the medical documentation.
- Prevent members of the security service from using improvised means to use coercive means, to use physical force in an unacceptable way (punches with closed and open fists, kicking, jumping with boots on a person deprived of liberty).
- Ensure that the video is kept in institutions for the execution of criminal sanctions for more than 30 days.

¹⁵² *Ibid.*, Члан 35.

¹⁵³ Данило Ајковић, Велибор Бошковић, Наташа Гардашевић, Јована Хајдуковић, Далиборка Кнежевић, Маја Раичевић, Николета Стругар, Оливера Вулић, Поштовање људских права притворених лица и лица на издржавању казне затвора у Заводу за извршење кривичних санкција, Извештај мониторинг тима невладиних организација, Акција за људска права, Центар за недискриминацију Еквиста, Центар за грађанско образовање, Сигурна женска кућа, Подгорица, 2012.





- In case of extraordinary events (barricading, hostage situations, self-injury), it is desirable to record every official action-intervention of members of the security service in the part that is not covered by the video surveillance system.
- According to the CPT's recommendations, rubber truncheons cannot be prominently displayed by members of the security service, especially holding them in their hands during patrols in the accommodation zones of persons deprived of their liberty.
- It is desirable to form highly-trained and specialized mobile teams for emergency response, trained for sensitive handling and adequate use of coercive means.
- Any abuse or overstepping of authority by officials must be recorded and prosecuted in disciplinary or criminal proceedings.
- Install an alarm system in rooms with persons deprived of their liberty.
- Before the intervention, try to prevent any situation through mediation, negotiation, provide training in negotiations for members of the security service.
- After each intervention, take photographs of the scene, provide video material, official notes, statements of eyewitnesses, ie other persons deprived of liberty, the statement of the person against whom the coercive measure was applied.

Proactive measures in case of disciplinary measures and procedures:¹⁵⁴

- Ensure that persons serving a sentence of solitary confinement have the right to visit family members and other close persons.
- Ensure that all persons sent to solitary confinement have a stay in the fresh air.
- Ensure that all persons are informed in a timely and continuous manner of their rights and obligations, through the introduction of the institute of legal advice.
- All convicted persons must be acquainted with the Rules of Procedure, which must be multilingual and accessible, both upon receipt in the form of a brochure and in the library of the institution.
- All documentation on disciplinary proceedings must be in order, accessible, with instruction on legal remedies and evidence of service on persons deprived of their liberty.
- All documents regarding a specific event or procedure (statements of the suspect, official and other statements made available to the person deprived of liberty) before the procedure itself. The following may be presented: evidence collected.¹⁵⁵

¹⁵⁴ Данило Ајковић, Велибор Бошковић, Наташа Гардашевић, Јована Хајдуковић, Далиборка Кнежевић, Маја Раичевић, Николета Стругар, Оливера Вулић, Поштовање људских права притворених лица и лица на издржавању казне затвора у Заводу за извршење кривичних санкција, Извештај мониторинг тима невладиних организација, Акција за људска права, Центар за недискриминацију Еквиста, Центар за грађанско образовање, Сигурна женска кућа, Подгорица, 2012.

¹⁵⁵ М. Жарковић, И. Бјеловук, Т. Кесић, *Криминалистичко поступање на месту догађаја и кредибилитет научних доказа*, Криминалистичко-полицијска академија, Београд 2012, стр. 17.





The authors of the Collection of Practical Policy Proposals state that the notion of vulnerable groups in the context of human rights is such that it includes groups that often face discriminatory treatment or need special attention to prevent potential violations of their human rights, special and different circumstances in which these persons are found to lead to the fact that equal treatment of them essentially contributes to their bad position and is unjust. The notion of vulnerable groups is given in the collection of practical policy proposals for police reform and is in itself quite broad, conditioned by the space and time in which it is defined. They state that in our country, vulnerable groups can include Roma, women, minors and LGBT people.¹⁵⁶ Operational procedures for dealing with vulnerable categories of prisoners:¹⁵⁷

In the case of foreign nationals, at each time of detention or imprisonment, the prison administration should inform the embassy or consulate that they have admitted the person to prison and ensure that the provisions of the house rules are explained to them in a language they can understand.

Vulnerable categories of prisoners are accommodated in special rooms intended for this purpose, taking into account that such rooms do not have physical barriers, are easily accessible (eg are located on the ground floor for prisoners with physical disabilities or are physically separated if about minors or women).

When assessing the risks and needs for such a category of vulnerable prisoners, a microthym composed of re-education and security services determines the need for additional supervision and monitoring. The prison officer shall be notified by his / her superior (Assistant Director of Security or Supervisor). Upon receipt of such notification, the prison officer is obliged to exercise enhanced care and supervision over that vulnerable prisoner.

The individual treatment program is adopted by a multidisciplinary team composed of psychologists, social workers, pedagogues, doctors, educators, criminologists and authorized persons from the security sector. In the process of compiling the treatment program, the convicted person is consulted and he should give his consent to that program, which makes it final.

The treatment program includes educational activities, cultural and educational activities, sports activities adapted to their vulnerable status, occupational therapy and

¹⁵⁶ Збирка предлога практичне политике за реформу полиције у заједници, број. 8, јул 2013, Београдски центар за безбедносну политику, Београдски центар за људска права, Београд, стр. 33.

¹⁵⁷ Фаик Фејзић, Реџо Кахрић, Ратко Кешел, Божана Милаковић, Миро Продановић, Амер Софтић, Род Мек Кован, Приручник за обуку о додатним способностима затворских службеника са оперативним процедурама, пројекат: Усклађивање казнене политике и праксе у Босни и Херцеговини са европским стандардима, стр. 97-98





sections. The prison officer carries out all activities provided for in the program, according to the terms specified in the program.

The prison officer must record the stay at such activities provided for in the program, as well as any absences. The educator has the obligation to monitor those records through planned and unplanned conversations with the vulnerable convicted person. During each interview, the competent educator makes a note of the interview, which he invests in the personal file, ie the file.

The multidisciplinary team meets every six months to analyze the previously adopted treatment program. In cases where the treatment does not take place according to the adopted program, the competent educator conducts an interview with the vulnerable convict and proposes corrections to the program adopted by the multidisciplinary team.

Preparations for release should be particularly intensified in the case of vulnerable categories of prisoners. Before the end of the prison sentence (a few months earlier), the vulnerable convicted person returns to the reception-release ward (POO) where the regime is more lenient. In doing so, special attention is paid to the need to ensure contacts with the social worker, more telephone contacts with the family or more visits are provided, and contact with a psychologist is made if necessary.

Exceptionally, if the conditions of stay do not correspond to the physical health of the prisoners from the vulnerable category or if the prison does not have a special POO, the person may remain in the parent collective, provided that the conditions are provided.

At the beginning of the month, the educator informs the assistant director for security or a person authorized by him about the names of convicted persons who are released that month. The director of the prison has the obligation to inform the Center for Social Work in charge of the place of residence about the imminent release of the convicted vulnerable person, with the aim of organizing post-penal assistance.

Upon the release of a foreign citizen from serving a sentence, the prison administration is obliged to contact the field administration for affairs with foreigners in writing for its collection and implementation or to the asylum center or for implementation to the border and handover to the competent authorities.

Procedure for dealing with the minority prison population, members of cultural minorities: If a member of the minority prison population addresses a prison officer with a request related to specificity and cultural or other minority affiliation, such as: special food, literature, press, electronic media in the mother tongue, performing religious rites under special conditions, procuring books, procuring special food at one's own expense, health treatment that respects cultural affiliation, etc., the prison officer shall proceed as follows:

-Receives an oral request from a prisoner or detainee. If he cannot resolve it himself, he transfers the request to the superior supervisor.





- If the prison officer and the supervisor cannot resolve the request in question, the prison officer instructs the prisoner to submit his request to the prison administration in writing according to the prescribed procedure.
- In the case of requests that can be resolved orally and immediately, the supervisor of the prisoner shall orally inform about the actions taken and the possibilities of acting upon his request.
- At the written request of the prison administration, it delivers a written answer to the prisoner on the result of acting on his request.
- In case of impossibility to resolve the prisoner's request, it is necessary to inform him in writing about the undertaking of additional actions that can be taken with the aim of resolving his request.
- When a prison officer notices the existence of conflicts and tensions that are a consequence of cultural or religious differences within the prison population, he reacts immediately to prevent further conflict and tensions: He currently separates the conflicting prisoners. Through the available means of communication, he immediately informs the supervisor about the observed conflict and the actions taken. The prison officer prepares a report on the observed tensions, conflicts or the obtained knowledge about their possible existence, which are the result of cultural differences among the members of the prison population.¹⁵⁸

Guidelines for the transfer of persons deprived of their liberty to judicial and other institutions:

Regarding the conditions of escorting vehicles for the transport of persons deprived of their liberty, they have a separate, secured space for persons with ventilation and lighting devices. The vehicle may have a video surveillance system to control persons during transport and a system for remote monitoring of vehicles. Exceptionally, when the nature of the task requires it, vehicles without markings and special devices, vehicles of special construction with protection against small arms, as well as ambulances can be used.¹⁵⁹

The escort of sick and exhausted persons deprived of liberty or a pregnant woman is carried out on the basis of the obtained opinion of a doctor, if necessary accompanied by a medical worker. If the institution has an ambulance, the implementation will be done with it. Execution of persons deprived of their liberty may be carried out without the

¹⁵⁸ Приручник за обуку о основним способностима затворских службеника са оперативним процедурама, пројекат: Усклађивање казнене политике и праксе у Босни и Херцеговини са европским стандардима, стр. стр. 52

¹⁵⁹ Правилник о униформи, ознакама, наоружању, специјалним возилима и другој опреми у Служби за обезбеђење у Управи за извршење кривичних санкција "Службени гласник РС", бр. 29 од 18. марта 2016, 74 од 2. септембра 2016, 3 од 18. јануара 2017, 89 од 4. октобра 2017.





previously obtained opinion of a doctor, if it is necessary to urgently refer them to a health institution for medical intervention..¹⁶⁰

During the escort of a person deprived of liberty, in cases of need to use the toilet, the person deprived of liberty who is being held may be tied up to control his presence in that room, or otherwise ensure that he does not escape, respecting the dignity of his person.¹⁶¹ Binding cannot be done in a way that a person deprived of liberty is tied to pieces of furniture in courtrooms and other premises, in a toilet for radiators or similar. The CPT states in its reports: Tying, even violent and disobedient prisoners, to pieces of furniture "until they calm down" is unacceptable, and the use of tying as punishment must never be applied under any circumstances.¹⁶²

Implementation guidelines:
Escorting prisoners is realized according to standard dynamics: 1. introduction to the order to escort the convict and characteristics of prisoners, 2. check of preparation of members of the Security Service (weapons, means of restraint, communication system), 3. inspection and search of vehicles and check of prohibition system. 4. going for a prisoner, detailed search and identification, 5. control members of the Security Service at the exit point.
The vehicle is marked with bottled water for a prisoner, and depending on the length of the route, a dry meal.
Carrying out the execution along an unnecessarily defined route, inform the duty service for each change of route and enter it in the report.
Upon arrival at the scene, it is necessary to clean the wrapping of the surroundings, passers-by, front and rear foreign objects, parked vehicles.
For parking use facilities covered by video surveillance and official parking lots. Do not park on green areas or parking spaces for people with disabilities.
Take the LLS out of the vehicle and move with it with constant direct physical contact by holding the person.
To enter the building, use the entrance from the back - extremely side entrance, do not lead people to the main entrance.

¹⁶⁰ Правилник о начину обављања послова у служби за обезбеђење у заводима за извршење кривичних санкција "Службени гласник РС", бр. 21 од 4. марта 2016, 104 од 23. децембра 2016.

¹⁶¹ Правилник о начину обављања послова у служби за обезбеђење у заводима за извршење кривичних санкција "Службени гласник РС", бр. 21 од 4. марта 2016, 104 од 23. децембра 2016.

¹⁶² CPT, Izveštaj o poseti Ujedinjenom Kraljevstvu, 1997, 107; Izveštaj o poseti Hrvatskoj, 2003, 74.





Introduce LLS into the facility of the judicial body by passing through the KD door and reporting to the members of the judicial guard.
In the building lls lead up the stairs to the upper floors on the right side (to the wall), never to the windows or sims.
Pay special attention to the openness of the window.
Use toilets without windows and other physical openings.
By arriving in front of the courtroom and while moving to the courtroom, avoid any physical or verbal contact with other parties, visitors, defense counsel, the victim's family, etc.
Depending on the situation (whether the courtroom is free) practice with the appearance and presence of court staff the introduction of lls into the courtroom and removal from the hallway and out of sight of other parties and visitors, victims' families, as well as inspect the courtroom.
During the trial, direct and constant physical and visual contact with the person being conducted. Obligatory to take confirmation of bringing lls.
At the end of the trial, the person will be informed by first inspecting the area in front of the courtroom and the surroundings, and then lls be informed by the shortest route without any delay.
In case of any detention in the court premises, lls keep at the offices of the Judicial Guard.
n case of an attack on the escort service during the transport of lls, spec. take the vehicle to the nearest police station and inform the duty service.
In case of the presence of journalists and attempts to photograph the lls, members of the security service should be deployed in the formation of the ring, with as little exposure as lls.
All documentation, which contains personal data or medical documentation, should be carried with you.

One of the necessary conditions for recognizing and reacting to discrimination in prisons is adequate training of officers, so that they do not turn from someone who needs





to recognize and react to discrimination in prison into a discriminator. A particularly important item in the training should be dedicated to the elimination of prejudices against any ethnic or other group. Prejudices are wrong opinions or beliefs, of positive or negative orientation, which are contrary to logical reasoning and based on arbitrary generalization, but which the individual takes from the environment as patterns of his own thinking.¹⁶³ articular work should be done to prevent prejudice against vulnerable groups in prisons.

Within the status and protection of the rights of persons deprived of their liberty, the application of laws and regulations related to: regulation of the institution is checked; accommodation conditions and free time; conditions for maintaining personal and general hygiene and supply of clothes, shoes and underwear; admission of a convict to an institution; the convict's rights to telephone, visit, correspond, receive remittances, receive packages, legal aid, complaints and notifications; food, kitchen and canteen; health care organization; legality in the implementation of health care; disciplinary proceedings against convicts.

The organization of the institute is checked by inspecting: 1) the type of institute, department and service in the institute; 2) capacity of the institution and the number of persons deprived of liberty (detained, convicted, misdemeanor convicted, newly admitted, harmonization of the capacity of the institution and the number of persons deprived of liberty); 3) separation by sex and age or other characteristics (women, minors, etc.); 4) number of foreign citizens.

Accommodation conditions and free time are checked by inspecting: 1) dormitories (size, number of accommodated persons deprived of liberty, equipment, lighting, ventilation, heating, toilets); 2) living room (size, number of persons, equipment, lighting, ventilation, heating, toilets); 3) hygienic conditions in the premises where persons reside; 4) availability and technical correctness of drinking water; 5) free time that the convict spends in the fresh air and organizing physical activity.

Conditions for maintaining personal and general hygiene and the supply of clothing, footwear and laundry are checked by inspecting: 1) means for personal hygiene and room hygiene, the possibility of washing and drying clothes; 2) sanitary devices (condition and correctness of toilets, hot water, number of toilets, availability, tidiness); 3) bathrooms (heated bathrooms, number of showers, frequency of bathing, privacy); 4) clothing, underwear and footwear (quantity, adequacy, appearance and maintenance conditions); 5) equipped with bed linen and blankets in accordance with the season (quantity, quality, cleanliness, frequency of change).

¹⁶³ С. Флере, *Предрасуде*, Енциклопедија политичке културе, Београд 1993, стр. 927-931.





Admission of a convict to the institution is checked by inspecting: 1) application of laws and other regulations in the field of keeping personal records of persons deprived of liberty (basic and auxiliary records, notification and correspondence with competent authorities); 2) acquainting convicts with the rights and obligations upon admission to the institution; 3) acquainting convicted foreigners and persons with special needs with the rights and obligations upon admission to the institution; 4) availability of the Law and the House Rules (sufficient number of copies in the language used in the institution and in the languages of minorities).

The convict's rights to telephoning, visits, correspondence, receiving remittances, receiving packages, legal assistance, complaints and notifications are checked by inspecting: 1) telephoning (frequency, number of payphones, length of conversations, privacy, availability of telephone cards, possibility to call the family immediately after admission to the institution); 2) visits, visits in a special room (frequency, duration and types of visits, layout of the visiting rooms); 3) correspondence and restriction of the right to correspondence (supervision); 4) receipt of remittances; 5) receipt of the package, ie the manner of performing the content review; 6) provision of legal aid (number and type of legal aid and who provides it); 7) acting on the complaints of convicts (number and type of complaints and to whom they are addressed, complaints due to torture, abuse, humiliation, number of adopted, rejected and complaints in the procedure, manner of deciding on the appeal or request for judicial protection); 8) informing (printing, watching TV and radio programs, using DVDs, reading books from the library or that he get himself).

Nutrition, cuisine and canteen are checked by inspecting: 1) menu (planning, method of preparation, quality, quantity, variety, presence of fruits and fresh vegetables); 2) menu for a special diet for medical, cultural or religious reasons; 3) storage of food sample for 24 hours; 4) bacteriological safety of food, water, dishes; 5) warehouse, kitchen and dining room (hygiene, equipment); 6) work of employees in the kitchen and engagement of convicts in auxiliary jobs in the kitchen (qualification, sanitary examinations); 7) conditions for independent preparation of beverages (kitchenette, etc.); 8) work of the canteen - shops (supply, working hours, prices).

The organization of health care is checked by inspecting: 1) the number of employed general practitioners, specialists and other health workers; 2) hiring a doctor on the basis of a contract; 3) the possibility of performing specialist examinations in the institution and outside the institution (dental, psychiatric and other specialist examinations); 4) other employees trained to provide first aid; 5) additional education in the field of prison pathology, prevention of infectious diseases and suicide prevention; 6) establishing contacts with competent health institutions.





Legality in the implementation of health care is checked by inspecting: 1) documentation on the performed medical examination upon admission of a person deprived of liberty in the institution (within which period it was performed), upon return to the institution from temporary leave, before discharge from the institution, after application of coercive measures and special measures, on the examination of a convict who is ill or refuses food and water, etc.); 2) records on performed medical examinations and visits of the convict during the serving of the disciplinary measure of solitary confinement during the day and night; 3) procedures for applying for a medical examination (waiting for an examination, number and type of examination, privacy during the examination, respect for personality and dignity, respect for the confidentiality of data without the right to inspect personal medical documentation, etc.); 4) emergency procedures; 5) equipment of the ambulance and hospital (number of beds, material and hygienic conditions); 6) health care procedures outside the institution (number, institution, shortcomings and problems); 7) pharmacy equipment (supply of medicines, storage, procedures for prescribing therapy, records); 8) health documentation and records (medical examinations, injuries, deaths, food quality control, records on persons who refuse treatment, food and water, etc.); 9) procedures in the prevention of infectious diseases, hepatitis, tuberculosis, sexually transmitted diseases and HIV / AIDS; 10) actions of doctors in providing general health and hygienic conditions in the institution (medical control of accommodation, nutrition, hygiene, sanitary and other conditions on which the health of convicts depends).

Disciplinary proceedings against convicted persons are checked by inspecting: 1) records; 2) type of disciplinary offenses; 3) material responsibility; 4) disciplinary measures; 5) providing professional legal assistance; 6) decisions on appeal; 7) obsolescence.¹⁶⁴

¹⁶⁴ Правилник о надзору над радом завода за извршење кривичних санкција "Службени гласник РС", број 85 од 9. октобра 2015.





2.4. Communication and Protection against discrimination

A scientific field which is of particular importance for prevention against discrimination in prisons is penological andragogy. Penological andragogy or re-education of adults is based on certain principles by which set goals are achieved. Principles by themselves aren't enough for realization of set goals if the work methods aren't set up towards a specific goal. The work methods are therefore deliberate and planned approach in work and all of them have strict rules by which they apply. Methods, in other hand, require application of certain means which enable it to be successfully implemented. Work methods with imprisoned persons of importance for protection against discrimination are: principle of trust and respect of convicted personality, principle of character recognition, principle of universality of re-educational work, principle of educational influences unity, principle of conscious and active participation of convicted in his re-education.¹⁶⁵

The types of adaptation to prison institution stays are different and with individual characteristics and according to them proper communication strategy should be chosen. Following forms of adaptation are usually listed:

Conformity – some of convicted persons in midst of feeling the guilt for committed crime begin to accept all the rules of prison personnel. This doesn't mean necessary, mandatory identification with the formal system.

Criticism – convicted person constantly reminds prison personnel of violation of rules and Law, which further complicates serving the sentence. This emphasizes the attitude that the members of personnel are real deviant.

Innovation – this way of adaptation is manifested with attempts of convicted to change the regime of serving his sentence in a peaceful way and uses different ways of persuasion for that purpose (writing complaints, pleas and petitions).

Manipulation – attempt of convicted person during the adaptation to prison difficulties to outwit prison personnel, but not to be in conflict with behavior norms. These are usually convicted persons that have gained certain positions inside the prison and are well aware of its order.

¹⁶⁵ <http://penoloska.ac.gov.rs/literatura.html#psihologija>





Those types of adaptations are directly related to many deprivations that convicted persons encounter in prison. In prison, freedomless is an implicit type of deprivation, but this does not mean that prison environment isn't causing another types of deprivations observed from the aspect of human needs. We will list some types of deprivations in prison conditions: deprivation of freedom, material goods, safety, autonomy and sexual relations. It is necessary to know the deprivation impact upon the convicted personality in order to draw conclusions about opportunities of adaptation to the prison environment and deprivation itself.¹⁶⁶

- a) Deprivation of freedom – separation from family members, social isolation, loneliness
- b) Deprivation of material goods and services – in prison system someone else is dictating what can be owned, when the food will be given or when going to work will be. This is understandably in direct contrary to feeling that all this things offender has a need to accomplish on his own.
- c) Security deprivation – staying in the facility represents an opportunity that for some period of time in the same environment person is being held with other individuals about whom nothing is known which by itself increases the feeling of dangerment.
- d) Autonomy deprivation – in prison facilities there are plenty of behavior rules which is eliminating possibility for the convicted person that he can somehow affect all these rules.
- e) Sexual relations deprivation.¹⁶⁷

Of special importance for prevention against discrimination is good and substantial communication between the convicted persons and prison personnel. Generally speaking, communication process consists of 4 basic elements: sender, message, recipient and context. Every communication has its own expressive component (informing what already exists) and influential component (achieving of still non-existent). If the communication doesn't have both components than it doesn't serve its purpose. Communication can be verbal and non-verbal, substantial and relative, congruent and incongruent. That means there are not direct relations/encounter without communication which introduces us to the first communication axiom.

Communication is successful if intention, thought and spoken message of a sender corresponds to the received message of recipient. Only when a recipient of the message interprets and understands it in a certain way, it affects him and his behavior. Metacommunication i.e. communication about our communication and communicational

¹⁶⁶ <http://penoloska.ac.gov.rs/literatura.html#psihologija>

¹⁶⁷ <http://penoloska.ac.gov.rs/literatura.html#psihologija>





feedback i.e. mutual exchange of feedbacks, we are getting reliable knowledge what is really happening in current communication. During communication many things are assumed and also distorted. To make everyday communication understandable and

Successful, we must concretize, complement omitted, also to check over subjective prejudices. Non-verbal communication consists of:

- Body language (posture, orientation, body movements while sitting, walking and lying down),
- Eye contact (gaze, pupils, eye muscles),
- Speech behavior (speed, rhythm, tone and volume of the voice, articulation, voice melody, perspicuity),
- Touching, dressing, spatial and temporal dimension of behavior (intimate, personal and public during contact)
- External context (external circumstances during communication).

Non-verbal communication confirms, denies, changes and evaluates meaning what was said, reveals peculiarity of the person we are talking to, defines relations and attitudes during the conversation, determines degree of influence and effectiveness of the message.

The secret of successful interpersonal communication consists of mutual harmonization of verbal and non-verbal messages. That process of harmonization of our communication consists of 3 steps: perceiving and recognizing nonverbal messages, metacommunication of nonverbal communication and mutual convergiment of inconsistencies.

To avoid potential obstacles in communication, always try at the begging of communication: to understand and be aware if the person knows the subject of conversation and try to make messages and sentences to be short, simple, understandable and specific, vocabulary should be adjusted to your interlocutor – in communication with the convicted should be avoided usage of ambiguous, vague, unclear, abstract, incomprehensible, foreign and complex words, jargon and codes; avoid using filler words (um, some kind of, like); speak calmly; leave out unnecessary and excessive details.¹⁶⁸

Be an active listener – active listening is a capability to hear and understand what another person is telling. That's why when you are actively listening you should take care of: listening with interest and attention, do not show signs of boredom and refusal, allow

¹⁶⁸ Фаик Фејзић, Реџо Кахрић, Ратко Кешел, Божана Милаковић, Миро Продановић, Амер Софтић, Род Мек Кован, Приручник за обуку о додатним способностима затворских службеника са оперативним процедурама, пројекат: Усклађивање казнене политике и праксе у Босни и Херцеговини са европским стандардима, стр. 12





prisoner to express emotions, give enough time to prisoner for conversation and do not interrupt your interlocutor; during the conversation do not react emotionally and keep professional behavior; always have in mind that your role is listen and try to solve the problem or to forward it to someone who can; watch your interlocutor into the eyes to show you are listening and pay attention to what is said; nodding from time to time, miming or simple words “understand”, “yes”, confirm you are listening; if needed summarize what the prisoner has said; advise a prisoner to take a deep breath or to count to 10 and backwards to calm down if he/she can not talk; offer your interlocutor to sit down can be effective.¹⁶⁹

Discard prejudices: Active listening means temporarily to suspend any prejudices so you can hear what is actually being told. Prison officers must know to differentiate a person by its behavior in prison. Not having prejudices doesn't mean not to judge people by their current behavior and observing the person without thinking about their previous acts. Sometimes, it is really hard to be without prejudices in routine, daily situations in which it is usual that in most cases prisoners complain on other prisoners, prison or you. Despite this, if the first impression formal opinions and prejudices are not rejected, you will never be able to “hear” real, verbal signals that you must hear so you could prevent danger or help someone.¹⁷⁰

Always avoid unwary talk. In prison environment personnel must always take care what, to whom and what about is being talked. In everyday work with prisoners, usually is being used so called “unwary talk” where personnel speaks about its personal issues, issues of their colleagues or other prisoners, that prisoners can hear and it is not unusual that personnel talks about this directly with the prisoners themselves: (DO NOT TALK with new prisoners without thinking first about what and how much you can say, DO NOT TALK with prisoners about your life or life of your colleagues, do not complain about the working conditions, problems inside departments etc. NEVER DO FAVORS to the prisoners, no matter how insignificant they are, because there is always a danger of further extortion and then it will be hard to say NO! ACT to all prisoners equally, without discrimination; DO NOT DISCUSS about safety issues in the presence of others, BE

¹⁶⁹Фаик Фејзић, Реџо Кахрић, Ратко Кешел, Божана Милаковић, Миро Продановић, Амер Софтић, Род Мек Кован, Приручник за обуку о додатним способностима затворских службеника са оперативним процедурама, пројекат: Усклађивање казнене политике и праксе у Босни и Херцеговини са европским стандардима, стр. 12

¹⁷⁰Фаик Фејзић, Реџо Кахрић, Ратко Кешел, Божана Милаковић, Миро Продановић, Амер Софтић, Род Мек Кован, Приручник за обуку о додатним способностима затворских службеника са оперативним процедурама, пројекат: Усклађивање казнене политике и праксе у Босни и Херцеговини са европским стандардима, стр. 12





CAREFUL with information and top-secret documents, share them only with those who are authorized to know them.¹⁷¹

Avoid bad communication with prisoner! Do not close your eyes in front of a problem, talk (always wonder what are prisoner's motives, what is behind the talk); If you are unaware or if you do not know something – seek advice; Be loyal to your colleagues and your employers; Acknowledge your own prejudices and set them aside. Be always friendly but avoid friendships. Keep your feelings under control, because they can expose your weaknesses; Be consistent in communication, do not work by principle “hot-cold”; Do not do favors, they might be offered with some condition; Do not allow prisoner's support and his affection for you to affect on your evaluation. Change your habits – don't be predictable, sometimes behave unexpectedly; Be honest, open minded and dedicated to your work. Do not involve your own emotions; Listen actively even if the things sound familiar, already seen, to simple, unimportant or boring or if they sound too complicated to understand them. Be professional in working with prisoners and according to your duties.¹⁷²

2.5. Anti-discrimination regulations and operational work

Each of the human rights can be limited by some of the forms of discrimination, so it is crucial to point out the concept of discrimination. Discrimination is any unjustified discrimination or unequal treatment, or omission (exclusion, restriction or preference), in relation to persons or groups as well as members of their families, or persons close to them, in an open or covert manner, based on actual or presumed personal property.¹⁷³

Discrimination in prison can be committed by anyone, a canteen worker, convicts among themselves, guards. It can happen anywhere - at work, in a prison school or in a hospital, in disciplinary proceedings, during the funeral of persons deprived of their liberty, during

¹⁷¹ Фаик Фејзић, Реџо Кахрић, Ратко Кешел, Божана Милаковић, Миро Продановић, Амер Софтић, Род Мек Кован, Приручник за обуку о додатним способностима затворских службеника са оперативним процедурама, пројекат: Усклађивање казнене политике и праксе у Босни и Херцеговини са европским стандардима, стр. 12

¹⁷² Фаик Фејзић, Реџо Кахрић, Ратко Кешел, Божана Милаковић, Миро Продановић, Амер Софтић, Род Мек Кован, Приручник за обуку о додатним способностима затворских службеника са оперативним процедурама, пројекат: Усклађивање казнене политике и праксе у Босни и Херцеговини са европским стандардима, стр. 12

¹⁷³ Члан 2. став 1 Закона о забрани дискриминације (Сл. гласник РС, бр. 22/2009).





visits. In addition to direct and indirect discrimination, there are other forms defined by the Law on Prohibition of Discrimination. Violation of the principle of equal rights and obligations is provided for in Article 8 and it exists if a person or group of persons, due to his or their personal characteristics, are unjustifiably denied rights and freedoms or imposed obligations that are not denied or imposed on another in the same or similar situation. person or group of persons, if the goal or consequence of the undertaken measures is unjustified, as well as if there is no proportion between the undertaken measures and the goal achieved by these measures.¹⁷⁴

Example: If a security officer does not release members of Roma ethnicity in prison for sports activities under the pretext that the sports facilities are full, and at the same time allows members of other nationalities to enter. This is also discrimination in the provision of public services and the use of surface facilities. A prohibition on invoking a liability exists if a person or group of persons is unjustifiably treated worse than others would be treated or would be treated, solely or mainly because they have sought or intend to seek protection from discrimination or because they have offered or intend to offer evidence of discriminatory treatment.¹⁷⁵ Example: Prison security officer A.M. wants to report superior S.C. who told her that she was an incompetent woman and that she had a place to make coffee and sent her colleagues to intervene instead. According to the knowledge of the superior S.C. to A.M. she plans to report him to the chief, waits for her and informs her in private that she will work on the application form until further notice, that hell at work awaits her, if she reports it. It is a very socially dangerous association to discriminate,¹⁷⁶

that is, the activities of organizations or groups in prison (fan subculture in prison, right-wing organizations, etc.) aimed at violating the Constitution, rules of international law and legally guaranteed freedoms and rights, or inciting national, racial, religious and other hatred, discord or intolerance. There are also severe forms of discrimination and they are provided for in Article 13 of the Law on Prohibition of Discrimination, and they are:¹⁷⁷

1. provoking and encouraging inequality, hatred and intolerance on the basis of nationality, race or religion, language, political affiliation, gender, gender identity, sexual orientation and disability; 2. propaganda or discrimination by public authorities and in proceedings before public authorities; 3. propagation of discrimination through the

¹⁷⁴ Члан 8. Закона о забрани дискриминације, („Сл. гласник РС”, бр. 22/2009).

¹⁷⁵ *Ibid.*, Члан 9.

¹⁷⁶ *Ibid.*, Члан 10.

¹⁷⁷ Члан 13. Закона о забрани дискриминације, („Сл. гласник РС”, бр. 22/2009).





media; 4. slavery, human trafficking, apartheid, genocide, ethnic cleansing and their propaganda; 5. discrimination of persons on the basis of two or more personal characteristics (multiple or cross discrimination); 6. discrimination that has been committed several times (repeated discrimination) or that appears for a longer period of time (extended discrimination) against the same person or group of persons; 7. Discrimination that leads to severe consequences for the discriminated person, other persons or property, and especially if it is a criminal offense in which the predominant or exclusive motive for execution was hatred, or intolerance towards the injured party based on his personal characteristics. We will also show examples of other often present types of discrimination.¹⁷⁸

Gender discrimination. Illustrative example: The prison guard supervisor does not send a guard to patrol because he believes that women are not capable of doing so and that male colleagues must do so. Discrimination based on sexual orientation, example: Colleagues in prison avoid communicating with a colleague who has publicly declared himself an LGBT person and leave abusive messages on his locker in the rooms where they change. In the practice of the Commissioner for the Protection of Equality, there were examples when a police officer claimed that he had to declare his sexual orientation because of the support he provides to the LGBT population.¹⁷⁹

Discrimination against national minorities. Illustrative example: A prison guard tends to send convicts who are not of his nationality to the police. Discrimination on the grounds of political or trade union affiliation. Illustrative example: If the head of the prison guard would change commanders in the workplace, because they belong to a union that is not on good terms with the police union to which the chief of the guard belongs, while discrimination against persons with disabilities would mean an example Discrimination based on health status. Illustrative example: Prison guard A.C. has significantly increased his body weight due to hormonal disorders, the supervisor of the escort service avoids sending him to funerals, although by then A.C. always worked on the funeral of persons deprived of their liberty, with the explanation: "Who will watch you so fat to escort obsessed convicts". Discrimination based on conviction. In the slang of prison guards, the term "thieves" is often used for persons deprived of their liberty, which is unacceptable. Chapter Twenty-Eight Criminal Offenses against the Constitutional Order

¹⁷⁸ Напомена: Неки од приказаних видова дискриминације преузети су из праксе Повереника за заштиту равноправности, док су неки резултат имагинације и представљени су искључиво са циљем приказа и илустрације примера дискриминације.

¹⁷⁹ Из праксе Повереника за заштиту равноправности, преузето са: <http://ravnopravnost.gov.rs/>.





and Security of the Republic of Serbia, Article 317 provides for the criminal offense of inciting national, racial and religious hatred and intolerance. (1) Whoever incites or incites national, racial or religious hatred, or intolerance among the peoples or ethnic communities living in Serbia, shall be punished by imprisonment for a term between six months and five years. (2) If the act referred to in paragraph 1 of this Article is committed by coercion, abuse, endangering security, exposing national, ethnic or religious symbols, damaging other people's property, desecrating monuments, memorials or graves, the perpetrator shall be punished by imprisonment for one to eight years. (3) When the work referred to in Art. 1 and 2 of this Article by abusing their position or authority or if as a result of these acts there was disorder, violence or other severe consequences for the common life of peoples, national minorities or ethnic groups living in Serbia, they shall be punished for the act referred to in paragraph 1. imprisonment from one to eight years, and for the act referred to in paragraph 2, imprisonment from two to ten years.¹⁸⁰

Article 42 of the Law on Safety and Health at Work envisages the protection of employees on the basis of personal characteristics, health status: (1) Personal data collected in connection with medical examinations of an employee are confidential in nature and are under the supervision of the occupational medicine service, which performs those examinations. (2) Data on occupational injuries, occupational diseases and work-related illnesses shall be submitted to health and pension and disability insurance organizations in accordance with the law. (3) The data referred to in paragraph 2 of this Article may be submitted to other persons, only with the written consent of the employee. (4) The report on the medical examination of the employee shall be submitted to the employer in a manner that does not violate the principle of confidentiality of personal data. (5) It is not allowed to use data collected on the basis of medical examinations of employees for the purpose of discrimination of employees.¹⁸¹

Examples from the case law of the European Court of Human Rights are: In the case of *Keenan c. United Kingdom*, the court established the principle of proportionality according to which measures that interfere with the right to respect for private life, personal autonomy and physical integrity, must be necessary to achieve the legitimate aim of protecting the life of a person deprived of liberty and must be adapted to the specific circumstances of the case. Blanket measures that include e.g. the removal of clothing for large groups of prisoners may contribute to a disproportionate violation of the right to respect for privacy under Article 8 of the European Convention, which cannot

¹⁸⁰ *Ibid.*, Члан 317.

¹⁸¹ Члан 42. Закона о безбедности и здрављу на раду





be justified as necessary measures to protect an individual prisoner from the risk of suicide or self-harm.¹⁸²

In the case of *Edwards v. The United Kingdom* has found that the state failed to properly assess the danger of a detainee suffering from schizophrenia, who had previously attacked a person with whom he shared a cell, with a history of violent behavior. The person with whom he shared the cell was beaten to death, and the omission in this case also concerned an unrepaired emergency call button, even if the condition of the malfunction had been determined earlier. Thus, in this case, the violation of the right to life is intertwined with inadequate assessment and inadequate health care of detainees, which thus poses an immediate danger to other detainees, and the state's failure to protect a person deprived of liberty from another person's attack.¹⁸³

Regarding the hygienic conditions in prisons, the court in its practice generally found a violation of Article 3 if the cells were not supplied with daylight, then if heating and ventilation were poor, or if persons deprived of their liberty were occasionally left without water or electricity. the necessary conditions regarding the prisoners' bedding and clothing were met or the diet was inadequate. With regard to overcrowding in the cells where detainees or prisoners are housed, the court refers to the CPT standard, according to which each person deprived of liberty in a cell should have approximately 7 m² of space.¹⁸⁴

In the case of *Campbell v. United Kingdom*, the applicant who was in custody complained about the opening of letters addressed to a lawyer, which was resorted to by the prison administration, which raised the question of the right to respect for the prisoner's correspondence and communication with his legal representative. The Court found a violation of Article 8 of the Convention in the present case. In a whole series of later verdicts, the court adhered to this basic position. One of these is the judgment in the case against Serbia in the *Stojanović* case⁴¹, in which the Court referred in paragraph 72, inter alia, to the precedent in the *Campbell* case.¹⁸⁵

¹⁸² Милица Станојевић, Права лица лишених слободе-мастер рад, Правни факултет, Универзитет у Нишу, Ниш, 2016, стр. 17

¹⁸³ Милица Станојевић, Права лица лишених слободе-мастер рад, Правни факултет, Универзитет у Нишу, Ниш, 2016, стр. 17

¹⁸⁴ Милица Станојевић, Права лица лишених слободе-мастер рад, Правни факултет, Универзитет у Нишу, Ниш, 2016, стр. 22

¹⁸⁵ Милица Станојевић, Права лица лишених слободе-мастер рад, Правни факултет, Универзитет у Нишу, Ниш, 2016, сстр. 28





Thus, in its case-law, the court found a violation of Article 9 if the penitentiary institution did not provide food in accordance with the applicant's religious understanding.¹⁸⁶

2.6. Protection of gender equality in the system of execution of criminal sanctions

Author: Dejan Novakovic, PhD - manager of the Pozarevac-Zabela Penitentiary, project coordinator

Gender equality expresses the need of society to fully use all its human resources and capacities in order to develop economically, socially, culturally, politically. Gender equality implies equal representation, power and participation of both sexes in all spheres of public and private life and contributes to the establishment of gender balance and the building of harmonious relations for the benefit of all.¹⁸⁷ In order to understand gender equality, it is necessary to point out the difference between gender and gender: The term gender is used to denote the biological level of differences between men and women. These biological differences between women and men exist at all times and in all areas, regardless of living conditions, social status, ethnic or racial origin, and they are largely immutable. The term gender is used to denote divisions and differences between women and men that are of a social nature.¹⁸⁸

Gender as a social category refers to the differences that exist between men and women, and which are socially conditioned. It, in fact, represents the psychological and social level of these differences and divisions. This term shows how a society sees the role of a woman and a man, ie. what behavior he expects from women and what from men. These expectations relate first to how women and men should look, how they should dress, what toys to play with, which schools to enroll in, and then what jobs they should and should not do. Differences in the understanding of the social roles of women and men can be seen in different contexts - social, political, educational, economic.¹⁸⁹

Therefore, gender implies a set of roles, obligations and expectations that a certain society assigns and imposes on persons with regard to their gender. They can change over

¹⁸⁶ Милица Станојевић, Права лица лишених слободe-мастер рад, Правни факултет, Универзитет у Нишу, Ниш, 2016, стр. 30

¹⁸⁷ Vodič kroz prava žena u Srbiji, извор: <http://www.gendernet.rs>, 10.05.2016.

¹⁸⁸ З. Брозовић, Родна анализа – могућности примене у сектору безбедности, Родно осетљиви језик у сектору безбедности, Београдски центар за безбедностну политику, 2012, стр. 3.

¹⁸⁹ *Ibid.*





time and vary from society to society. Gender implies the biological characteristics of women and men, which are universal, visible and obvious and, for the most part, immutable. Gender equality means that women and men have equal opportunities, rights and obligations in their social, professional and family environment.¹⁹⁰

When we talk about gender equality in the system of execution of criminal sanctions, ie the uniformed part of security officers, most of the world's systems of execution of criminal sanctions still represent paramilitary, strictly hierarchical organizations, which, in addition to many reforms, often have pronounced problems in human resources and interpersonal relations. The specific subculture has not yet completely freed itself from deeply sexist attitudes about women. This subculture forms and shapes the different attitudes of employees and is formed practically from the student days, then entering the uniformed composition and after that retirement, it is radical and deeply resistant to changes. It is documented and generally known that there are still prejudices about calling a prison guard as exclusively male. That is, there are stereotypes about the traditional role of women, which are an obstacle that women often encounter in their work (police) and wider environment.¹⁹¹ The most common arguments that can still be heard today by opponents of even greater integration of women into the security system are that: Women have physical limitations, that no colleague would want them next to them in an intervention in a bar fight, that they are not able to work with serious criminals, view "women as a risk" of working in the police. For religious and cultural reasons, some men will not allow women to protect them. It is difficult to keep women, they get married, get pregnant, have children and are not interested in working in uniform.¹⁹²

Gender-based stereotypes about women are also present. In accordance with gender stereotypes, men and women differ in numerous psychological characteristics. Men are thus considered to make decisions much easier, to be more independent and self-confident, to have a more developed competitive spirit and leadership abilities than women. Women, on the other hand, are considered to be helpful, kind, and emotionally more expressive than men. Such perceptions can have different effects on the experiences

¹⁹⁰ Žene i muškarci u Republici Srbiji, Republički zavod za statistiku, Beograd, 2014, str. 5.

¹⁹¹ I. Zveržhanovski, B. Balon, Smernice za rodno osetljivu policijsku praksu : sa posebnim osvrtom na privlačenje, selekciju i profesionalni razvoj žena u policiji, Mreža žena policajaca Jugoistočne Evrope, UNDP Program Ujedinjenih nacija za razvoj, SEESAC - South Eastern and Eastern Europe Clearinghouse for the Control of Small Arms and Light Weapons, Stojkov štamparija, Beograd - Novi Sad 2012, str. 7.

¹⁹² C. Niland The impact of police culture on women and their performance in policing, Paper presented at the Australian Institute of Criminology Conference First Australasian Women Police Conference Sydney, 29, 30 & 31 July 1996, pg. 4.





of women in uniform. One of the possible consequences is that superiors and colleagues evaluate the performance of women worse than men.¹⁹³

Issues of importance for gender equality are addressed by the Law on Gender Equality and the Law on Prohibition of Discrimination. The Law on Prohibition of Discrimination, in Article 20, paragraph 2, explicitly lists prohibited actions that constitute discrimination on the grounds of sex: Denial of rights or public or covert recognition of benefits in relation to sex or due to gender reassignment is prohibited. Physical and other violence, exploitation, hatred, disparagement, blackmail and gender-based harassment, as well as public advocacy, support and treatment of prejudices, customs and other social patterns of behavior based on the idea of subordination or superiority, are prohibited. gender stereotypical roles.¹⁹⁴

Article 14 of the Law on Gender Equality emphasizes equal access to jobs and positions.¹⁹⁵ When it comes to deployment and promotion, Article 16 of the Law on Gender Equality states that: "gender cannot be an obstacle to promotion at work."¹⁹⁶

Analysis of the presence of underrepresented groups, especially women, among the various ranks in the prison guard, shows that women are still more represented in lower-ranking positions. Accordingly, it is necessary to implement measures to increase promotion in the service:

- Objective and non-discriminatory promotion criteria, which include rewards for problem solving.
- Minimize evaluation criteria that are biased in favor of a particular group.
- Clear, transparent and objective standards of job evaluation and performance appraisal as well as appointments based on revised job descriptions and required skills instead of outdated understandings.
- Use independent audit committees and examiners outside the organization to minimize biases within the organization or advancement through family / friendships.
- Provide equal access to on-the-job training in order to advance in your career.
- Ensure that individuals from underrepresented groups have equal access to positions that are considered valuable for career advancement.
- Ensure that promotion committees, when considering promotions, do not view positions normally held by women as less significant or penalize those who work part-time or flexible working hours.
- Carefully monitor the performance appraisal of female employees who have previously complained of sexual harassment.
- Encourage high-ranking civil servants to talk to members of the civil servants' association about the

¹⁹³ Увек жена никад колегиница – квалитативна студија препрека са којима се суочавају жене запослене у полицији и Војсци Србије, Београдски центар за безбедностну политику, 2012, стр. 46

¹⁹⁴ Закон о Забрани дискриминације у члану 20. став 2,

¹⁹⁵ **Закон о равноправности полова** („Сл. гласник РС”, бр. 104/2009).

¹⁹⁶ **Закон о равноправности полова** („Сл. гласник РС”, бр. 104/2009).





importance of applying for promotion. • Compare how supervisors rate women compared to male officers and conduct an investigation if women consistently receive lower grades. Conduct an independent survey among women who are eligible for promotion to gain insight into why women are applying or not applying for promotion.¹⁹⁷

The use of gender-sensitive language is one of the first steps in achieving gender equality. Gender-sensitive language actually implies the linguistic visibility of women, while the generic use of the masculine grammatical gender or the assumption that such use is automatically "gender neutral" violates gender equality if it is not accompanied by an appropriate explanation.¹⁹⁸

One of the important steps is the use of gender-sensitive language. Language is "the basic means of communication between people", it is a key element in "establishing and maintaining interpersonal relations" and transmitting "attitudes, values, ideologies and cultural models of a speech community". It is necessary to use gender-differentiated language everywhere and always, both in internal and external communication, ie. use consistently feminine grammatical gender for women. It is necessary to completely eliminate the term "miss" from oral, written and telephone communication, official letters, in all public and non-public situations of professional communication. The term "miss" should be avoided because it implies that the marital status of a woman is a necessary piece of information in official communication, which is incorrect and completely irrelevant. It is also important to know that women should not be titled in a way that identifies their marital status or relationship with men. It is necessary to standardize the signatures of employees (instead of an advisor, an advisor should write for an employed woman, etc.), business cards, signatures on official letters, inscriptions on offices, etc. When writing official letters, if the gender of the person to whom the letter is addressed is unknown, a generic masculine gender (eg respected) should not be used, but we must state 'respected / respected'. Terms that denote the names of positions, professions, occupations, titles, titles, jobs of women, are listed, as a rule, always in the female grammatical gender.¹⁹⁹

Examples: President, Prime Minister, Minister, Director, Cleaner, Psychologist-Psychologist, Lawyer-Lawyer, Expert-Expert and so on.²⁰⁰

In the event that certain newly coined feminine terms of titles, ranks and professions, for which the Serbian language did not have special forms until recently (pilot,

¹⁹⁷ T. Denham. „Reforma policije i rodna pitanja”. *Set prirucnika o rodnim pitanjima i reformi sektora bezbjednosti*. Ur. M. Bastick i K. Valasek. Ženeva: DCAF, OEBS/ODIHR, UN-INSTRAW, 2008. str. 14.

¹⁹⁸ С. Ћопић, Приручник о родној равноправности и родно заснованом насиљу за државне службенике и службенице, Пројекат Борба против сексуалног и родно заснованог насиља, Управа за родну равноправност, Министарство рада и социјалне политике, Београд, 2012, стр. 20.

¹⁹⁹ Извор: www.ombudsman.rodnaravnopravnost.rs

²⁰⁰ С. Ћопић, *op. cit.*, стр. 20.





soldier, etc.), seem "rude" or as if inconsistent with the language norm, we should keep in mind that everything in the language is a matter of convention and habit, and that, for example, the teacher was a "rude" and "ugly" word just over a century ago.²⁰¹ In Articles 23-29. Ordinances on titles in the Administration for Execution of Criminal Sanctions define ranks and titles in the security service.²⁰² The following ranks / titles have been determined for lower-level officers: - commander, commander, senior commander, senior commander. The following ranks / titles have been determined for mid-level officials: - junior supervisor, junior supervisor, supervisor, supervisor. The following ranks are assigned to high-level officers: - junior commander, junior commander, commander-commander, senior commander, senior commander.²⁰³

It is absolutely legitimate from the aspect of the use of gender-sensitive language to use terms and sign in official correspondence equally in both genders, according to the defined title. Although we have witnessed efforts to improve the position of women over the years, they are still in a subordinate position in most areas of life and work. Although they make up more than half of the world's population, only 40% of women are employed.²⁰⁴ Various interpersonal relationships occur in the work environment, and it is not uncommon for women as well as men to be victims of sexual harassment, but much more often.²⁰⁵ Sexual harassment is a problem that prevails in work environments, practically all over the world. Unfortunately, prison services are no exception. The prevalence of sexual harassment is 30% higher when it comes to women working in traditional male occupations.²⁰⁶

It is important to look at the types of sexual harassment of women in the military, as they most often occur in the police and prison guards in a similar or modified way: The first type of sexual harassment is a "service for service" salaries are based on the reaction

²⁰¹ А. Кузмановић Јовановић, Родно осетљиви језик у сектору безбедности, Београдски центар за безбедностну политику, 2013, стр. 8.

²⁰² Уредба о звањима у Управи за извршење кривичних санкција"Службени гласник РС", број 119 од 31. октобра 2014.

²⁰³ Уредба о звањима у Управи за извршење кривичних санкција"Службени гласник РС", број 119 од 31. октобра 2014.

²⁰⁴ GenderEquality in the World of Work, ILOElectronicNewsletter, International LabourOrganisation, Geneva, No. 4, pg. 25. Jan. - March 2003, (www.ilo.org/public/english/bureau/gender).

²⁰⁵ Љ. Контић, С. Милашиновић, Ж. Лазић, Социоекономски контекст права на достојанствен рад у Републици Србији, Транзиција и економски криминал : тематски зборник радова. 2, Београд: Криминалистичко-полицијска академија, 2014.

²⁰⁶ E. Lafontaine, L. TredeauThe frequency, sources, and correlates of sexual harassment among women in traditional male occupations. Sex Roles, 1986, 15(7/8), pg. 433-442.





of employees to sexual imposition.²⁰⁷ The second type involves creating a hostile work atmosphere, in which members of the military are targeted by male colleagues by inappropriately touching, insulting or pressuring them in terms of sexual activity. Any person in a command position who applies or approves explicit or implicit sexual conduct, aimed at influencing the career, salary or work of members of the military, is considered to be involved in sexual harassment.²⁰⁸

According to British police estimates, 38% of Australian and British female police officers and 57% of female police officers in the United States are sometimes or often exposed to various forms of sexual harassment.²⁰⁹ In terms of our Labor Law, harassment is any unwanted behavior caused by any of the grounds for discrimination that aims at or violates the dignity of the job seeker as well as the employee, which causes fear or creates a hostile, degrading or offensive environment.²¹⁰ While sexual harassment is any verbal, non-verbal or physical behavior that aims at or violates the dignity of the job seeker, as well as the employee, in the sphere of full life, which causes fear or creates a hostile, degrading or offensive environment.²¹¹

According to Maretić, sexual harassment is any undesirable, mainly bodily behavior of sexual characteristics that embarrasses, humiliates and intimidates a person on the basis of sexuality or gender. It can be verbal, such as vulgar jokes and insults, obscene phone calls, casual comments and / or sexual suggestions, suggestive and offensive signs, or humiliation in a gender-specific way. Sexual harassment can also be expressed through physical movement and / or exposing the victim to pornographic material, and this is non-verbal sexual harassment.²¹²

Barriers to reporting sexual harassment, especially in the police, cannot be separated and must be seen in the context of all employees.²¹³

Often only sexual harassment is very covert and presented through everyday and situations in which there are no witnesses. In this regard, we provide a list of behaviors that are considered sexual harassment: rape or attempted rape, undesirable pressure to provide sexual services, unwanted touching, leaning, cornering or pinching, unwanted

²⁰⁷ Увек жена никад колегиница – квалитативна студија препрека са којима се суочавају жене запослене у полицији и Војсци Србије, Београдски центар за безбедностну политику, 2012, стр. 49.

²⁰⁸ Увек жена никад колегиница, *op. cit.*, стр. 49.

²⁰⁹ M. Circelli, Sexual harassment in the Queensland Police Service - A report on the outcomes of the NPRU 1998 'Experiences in the workplace' survey - Pilot study, National Police Research Unit, Adelaide 1998,

²¹⁰ Закон о раду, чл. 21. ст. 2.

²¹¹ Закон о раду чл. 21. шт. 3

²¹² A. Maretić, Seksualno uznemiravanje i zlostavljanje – od vica do silovanja Centar za ženske studije, Zagreb 2001, str. 6.

²¹³ B.S. Dansky, D.G. Kilpatrick, (1997). Effects of sexual harassment. In W. O'Edonohue (Ed.). Sexual harassment: Theory, research, and treatment. Boston: Allyn and Bacon.





sexual looks or gestures, unwanted letters, phone calls or sending material sexual nature, undesirable pressure to make an appointment, undesirable sexual teasing, jokes, remarks or questions, beating an adult using the words girl, piece, doll, soul, etc., whistling, cat calls, sexual comments, transition from business to sexual topics, sex stories, questioning about sexual fantasies, preferences or sexual history, personal questions about social or sexual life, sexual comments about clothing, build or appearance, imitating a kiss, lying or spreading rumors about someone's sex life, neck massage, touching someone's clothes, hair or body, giving personal gifts, frequent stay around a person, hugging, kissing staring, patting or caressing, touching or rubbing on another person in a sexual sense, standing in someone's immediate vicinity, measuring a person from head to toe ("lift" look), staring at a person, sexually suggestive signals, facial expressions, winking, sending a kiss or licking the lips, standing in the way of a person, following a person and showing sexually suggestive material.²¹⁴

The term mobbing comes from the English language and originated from the word mob (mob, saint, scum), ie. mobbish (rude, vulgar, vulgar). This is how the word mobbing came into being, which means to intimidate in an ological way, to violate or destroy personal dignity, to mentally endanger or beat or exclude from the social environment.²¹⁵

In the article "Manipulations of modern communications for the purpose of mobbing," the authors define mobbing as violence in the workplace, which begins in the domain of communication, and the consequences it leaves are of a psychological nature. Therefore, it is often explained in the literature as psychological harassment, psychological abuse or terror. It is a "specific form of behavior and pathological (hostile and unethical) communication in the workplace", an attack on one's reputation and honor; with the aim of humiliating, eliminating or abusing another person. Today, it is "a complex, widespread and growing phenomenon, which has disastrous consequences for the workforce, the psychophysical health of the individual, the social environment of the individual and the entire community."²¹⁶

In relation to the social aspect, the characteristic victims of mobbing are young, newly employed and ambitious workers, older workers before retirement, the physically disabled, "honest people" (those who point out failures in work), people seeking more

²¹⁴ А. Дуловић, Сексуално узнемиравање на радном месту, извор: <http://www.socioloskaluca.ac.me> 10.11.2015.

²¹⁵ Б. А. Лубарда, Мобинг/Булинг на раду. Билтен судске праксе Врховног суда Србије, 2/2008. Београд, 2008. стр. 1.

²¹⁶ Р. Ђурчић, В. Пребирачевић, Н. Васић, Манипулацијама савременим комуникацијама у сврху мобинга, FBIM Transactions Vol.1 No.1 pp. 74 –84.





independence or salary increases and eccentrics.²¹⁷ Mober projects his inadequacy on others to avoid confronting her, to reduce the fear of knowing "who I am", to divert attention from his inadequacy, incompetence to allegedly irresponsible, incompetent and aggressive employees, all in order to keep their positions of power.²¹⁸

It is difficult to understand the difference between discrimination and mobbing without knowing phenomenology. In fact, discrimination is a distinction and violation of rights based on gender, race, religion, etc., while mobbing is psychological abuse and intimidation in the work environment, and the reason why someone abuses you does not have to contain a personal trait. Aleksandra Petrović states that it is generally accepted that the motivation of the perpetrator is the basic criterion for distinguishing between discrimination at work and harassment at work, and that in order to draw the line, it is essential to define and separate as clearly and precisely as possible the motives of discrimination. found at the root of harassment at work.²¹⁹

Discrimination at work can be considered in the sense of the Law on Prohibition of Discrimination, when an unjustified difference or unequal treatment is made towards an employee, ie omission (exclusion, restriction or giving priority) in relation to persons or groups and their family members, or persons close to them, in an overt or covert manner, based on race, color, ancestry, citizenship, nationality or ethnic origin, language, religious or political beliefs, gender, gender identity, sexual orientation, property status, birth, genetic characteristics, health status, disability, marital and family status, conviction, age, appearance, membership in political, trade union and other organizations and other real or assumed personal characteristics. " Abuse, on the other hand, is any repeated or passive behavior towards an employee or group of employees by an employer that aims at or constitutes a violation of the dignity, reputation, personal and professional integrity, health, position of the employee and that causes fear or creates hostility. , degrading or abusive environment, worsens working conditions or leads to the isolation of the employee or leads him to terminate his employment on his own initiative or terminate the employment contract or other contract. Abuse, in the sense of this law, is also incitement or incitement of others to abusive behavior. The perpetrator of abuse is considered to be an employer with the status of a natural person or a responsible person with an employer with the status of a legal entity, an employee or a group of employees with an employer who commits abuse.²²⁰ In essence, it is about surviving mobsters due to personal problems, complexes

²¹⁷ M.K. trandmark, L.R. Hallberg, The origin of workplace bullying: experiences from the perspective of bully victims in the public service sector. *Journal of Nursing Management*, 2007, 15, 332–341.

²¹⁸ Извор: <http://www.dps.org.rs/pocetna/448-mobing-i-liderstvo> 04.05.2016.

²¹⁹ A. K. Petrović, Problem razlikovanja diskriminacije i zlostavljanja na radu u pravnoj teoriji i praksi Republike Srbije, *Pravni vjesnik*, god. 30, br. 2, 2014, str. 76-88.

²²⁰ Član 6. Zakona o sprečavanju zlostavljanja na radu ("Sl. glasnik RS", br. 36/2010)





and one's own insecurity. Therefore, anyone can be a victim of mobbing, regardless of gender, age, religion, education, appearance or financial status.²²¹

But in harassment at work, it is crucial that the basis of employee harassment is not based on race, color, ancestry, citizenship, nationality or ethnic origin, language, gender, etc., but simply on the psychological need to harass and abuse someone. The act of harassment at work consists of a large number of different (active and passive) illicit behaviors, which depending on the effect they have on the addressee of harassment, can be divided into the following 5 categories: 1) attacks on communication, 2) attacks on social contacts, 3) attacks on the victim's reputation, 4) attacks on professional work and 5) attacks on physical health.²²²

On the other hand, the act of discrimination at work is made up of a large number of various forms of verbal, non-verbal or physical behavior, which is accompanied by denial of a right and putting the addressee of discrimination at work in a worse position. It has already been said that action, in itself, cannot be a reliable criterion for distinguishing between discrimination at work and harassment at work.²²³ In order to be discriminated against at work, there must be a causal link and a motive for harassment based on personal characteristics between the misconduct and the violation of the employee's rights. Typical cases in the Report of the Protector of Citizens from 2015:

A citizen in prison on the basis of a court decision imposing a suspended sentence: In the procedure of controlling the legality and regularity of the work of the District Prison in Prokuplje, the Protector of Citizens determined that the prison received a citizen who was not sentenced to prison, but suspended sentence, and that on the basis of such a court decision the citizen was deprived of liberty for 21 days. The Protector of Citizens sent a recommendation to the Administration for Execution of Criminal Sanctions to take all measures within its competence in order to determine the responsibility of officials of the Prokuplje District Prison for omissions in work that resulted in unjustified deprivation of liberty of the complainant. Recommendations were also sent to the Ministry of Justice to inform the complainant about the manner of exercising the right to compensation for unjustified deprivation of liberty, as well as to inform the State Attorney's Office after the payment of compensation in order to take the necessary actions to intentionally cause damage. or, through gross negligence, collect the amount of damages paid. Although the Protector of Citizens reminded the Director of the Administration that disciplinary responsibility, in addition to a civil servant who directly undertook an action or omission that constitutes illegal or improper work in the Administration, may be borne by the civil servant who was obliged to supervise the work of institutes and services. composition, in the disciplinary procedure only the responsibility

²²¹ Р. Ђурчић, В. Пребичачевић, Н. Васић, *op. cit.*, стр. 74 –84.

²²² А. К. Petrović, *op. cit.*, str, 76-88.

²²³ Ibid.





of a civil servant with a secondary education of the General Affairs Service of the Prokuplje District Prison.²²⁴

The convict's right to privacy was violated and effective protection from abuse was denied: Acting on the convict's complaint that a member of the Security Service of the Penitentiary in Sremska Mitrovica inflicted bodily injury by hitting him in the nose with a fist, the Protector of Citizens found that there were shortcomings in the work of that institution in the treatment of the convict. The shortcomings are reflected in the fact that a member of the Security Service attended the medical examination, although it was not requested by the doctor who examined the convict, and that the doctor did not report to the director that there were signs or indications that the convict was treated violently. The established omissions in the work of the Institute led to the fact that the origin of the convict's injury was not determined, nor was the person who inflicted the injury identified. The Directorate for Execution of Criminal Sanctions and the Penitentiary-Correctional Institution in Sremska Mitrovica accepted the recommendations for eliminating the shortcomings in the future work of doctors in the institution and members of the security service. The Protector of Citizens pointed out that performing a medical examination in accordance with the rules of the profession and the provisions of positive regulations is an important prerequisite for effective fight against impunity for any form of abuse, but also a significant segment in preventing violence against persons deprived of liberty, inter-convict violence or illicit conduct by officials.²²⁵

Typical cases in the Report of the Protector of Citizens from 2014:

The convict was not provided with orthopedic aids: The Protector of Citizens received a complaint from the convict indicating that he was not provided with knee prostheses for both legs in a timely manner. Before submitting the complaint to the Protector of Citizens, the complainant addressed the Penitentiary-Correctional Institution in Sremska Mitrovica, where he was serving his sentence, with a request to provide him with prostheses which, according to the doctor's report from December 2012, should be replaced. The Institute did not provide the above with the explanation that it did not have the necessary funds. In December 2014, the Protector of Citizens sent a recommendation to the Office to provide the complainant with the necessary prostheses without further delay, bearing in mind that the Office had previously informed the Protector of Citizens that the procurement of orthopedic aids would be provided for in the 2015 financial plan.²²⁶

Typical cases in the Report of the Protector of Citizens from 2013:

Example: Child in prison with mother: The Protector of Citizens was approached by a complainant who became a mother while serving her prison sentence. The complainant states that the program of treatment of her as a convict limits the child's right to unhindered and quality maintenance of personal relations with the father and close relatives, because the decision of the chief to allow the child's father to visit only once a month. The Protector of Citizens recommended that the Institute for the Execution of Criminal Sanctions, in cooperation with the guardianship authority, take appropriate measures to provide the child with conditions for unhindered and quality personal relations with the father and relatives,

²²⁴ *Ibid.*, стр. 133.

²²⁵ Редован годишњи извештај Заштитника грађана за 2015. годину, Београд, 15. март 2016., стр. 134

²²⁶ Редован годишњи извештај Заштитника грађана за 2014. годину, Београд, 15. март 2015., стр. 100.





in accordance with his best interests and not in accordance with the program. treatment of the convict, the mother of the child. The Bureau for the Execution of Criminal Sanctions acted on the recommendation.²²⁷

The detainee is allowed to stay with his / her spouse in a special room of the institution, without the presence of staff or other convicts.²²⁸ Several detainees sent complaints to the Protector of Citizens, pointing out that their right to marriage and family were endangered due to the length of the court proceedings and the long-term detention measure. The Protector of Citizens, within the limits of his competencies, using the authority to provide good services and mediation, acts preventively, in order to improve the work of administrative bodies and improve the protection of human rights and freedoms, through cooperative dialogue with representatives of the Belgrade District Prison and the Criminal Sanctions Administration. contributed to the establishment of special rooms in the District Prison in Belgrade for the visit of a spouse, children and other close persons. After creating the conditions for a visit in a special room of the institution, in mid-2013, in mid-2013, for the first time, a detainee was granted a marital visit in a special room of the institution, without the presence of staff or other convicts. That citizen has been in custody for more than five years!²²⁹

Typical cases in the Report of the Protector of Citizens from 2012:

Deployment of detainees: In 2012, the Protector of Citizens recommended that detainees who had not been previously convicted not be placed in the same dormitory as detainees who had been previously convicted, and that attention be paid to their distribution depending on the type of crime committed against them burden.²³⁰ Example: Ill-treatment of a convict: The established bodily injuries of the convict inflicted by members of the security service, which were not recorded in the official records, nor were reported to the director of the institution, constitute illegal and improper conduct, ie an act of torture. The Protector of Citizens recommended to the Bureau for Execution of Criminal Sanctions to determine the responsibility of the officials of the Bureau for violence against the complainant, for failing to record the inflicted bodily injuries and failing to inform the manager of the Bureau, as well as for the complainant not being examined by a doctor.²³¹

Binding of anxious / violent patients: The Protector of Citizens recommended that binding only be done if aggression control could not be established in any other medically justified way, that it must be a last resort, after less restrictive measures proved unsuccessful, that determined exclusively by the doctor, to be performed in the prescribed manner by appropriate means of binding that prevents injury, to last as short as possible and to be stopped as soon as other means and methods stop the patient's anxiety, that the healthcare worker is in direct contact with the bound patient. the bound patient is not available to other patients. In addition, it is necessary to keep proper records of all activities during the binding and the reasons for their undertaking.²³²

Typical cases in the Report of the Protector of Citizens from 2011:

²²⁷ *Ibid.*, стр. 39.

²²⁸ Предмет бр. 12-1847/13.

²²⁹ Редован годишњи извештај Заштитника грађана за 2013. годину, Београд, март 2014., стр. 79

²³⁰ *Ibid.*, стр. 38.

²³¹ Редован годишњи извештај Заштитника грађана за 2012. годину, Београд, март 2013., стр. 38

²³² *Ibid.*, стр. 40.





Physical and mental abuse of detainees: Example: After the visit described above, a convict addressed the Protector of Citizens with a complaint stating that he was exposed to illegal actions by officials in Pavilion VII of the Požarevac-Zabela Penitentiary. On December 27, 2011, the Protector of Citizens visited the complainant, during which he determined that he suffered a number of bodily injuries on December 24, 2011, and that the type and manner of injuries undoubtedly point to the conclusion that a rubber baton was used during the bodily injuries. and that bodily injuries were inflicted by members of the security service. In the opinion of the Protector of Citizens, this is an act of torture, which led to a violation of the mental and physical integrity of the complainant, and the circumstance that bodily injuries were not recorded in official records, nor that the director of the institution was notified, is illegal and improper. In addition, the fact that the complainant was not taken to a doctor for examination after the injury, his right to health care was entrusted. The Protector of Citizens sent a recommendation to the Penitentiary-Correctional Institution Pozarevac - Zabela, to take all available measures in order to determine the responsibility of the officials of the institution for violence against the complainant, for failing to record bodily injuries and failing to inform the manager of the institution. taken to a doctor for an examination.²³³²³⁴

Examples from the practice of the Commissioner for the Protection of Equality:

Case 1. The complaint of M. M. of B. against the Belgrade District Prison, for discrimination based on the status of a detainee. Opinion²³⁵ was brought in the proceedings regarding the complaint of M. M. from B. against the Belgrade District Prison, for discrimination based on the status of a detainee. The complainant, who is being held in a special detention unit of the Belgrade District Prison, considers that he has been discriminated against as a detainee, because greater rights are granted to convicts, although the law does not prescribe unequal treatment. In his complaint, he stated the rights that were denied to him as a detainee, while convicted persons are granted these rights. Z. Mr. G, the warden of the District Prison in Belgrade, stated in his statement on the complaint that apart from the legally prescribed restrictions, there is no unequal treatment of detainees in relation to convicted persons, as well as that the complaints about discrimination are unfounded. During the procedure, it was determined that the District Prison in Belgrade does not have the authority to decide on exercising the right to work, the right of detainees to stay once every three months with a partner, children or other close person in special premises, contact with persons outside the institution, health care, schooling and religious rites, because the decision to exercise these rights, at the request of the detainee, is made by the body conducting the procedure. Also, regarding complaints about the quality of food in the institution, health care, hygiene in the premises where detainees stay and the equipment of the prison library, no evidence was submitted during the procedure that would indicate unequal treatment of detainees in relation to convicts. Based on the established facts and circumstances, the Commissioner for the Protection of Equality

²³³ Препорука Заштитника грађана 12-3630/11

²³⁴ Редован годишњи извештај Заштитника грађана за 2011. годину, Београд, март 2012., стр. 34-35.

²³⁵ бр. 07-00-420/2013-02 датум: 20. 11. 2013.





gave the opinion that it had not been established that the District Prison in Belgrade had discriminated against M. M. on the basis of his personal characteristics - the status of a detainee.²³⁶

Data processing in institutions for the execution of criminal sanctions - announcement of the Commissioner for Information of Public Importance and Personal Data Protection:

Commissioner²³⁷ for information of public importance and protection of personal data in the statement of 15 April 2015 positively assesses that the Directorate for the Execution of Criminal Sanctions ordered all institutions for the execution of criminal sanctions to act urgently on the recommendations and remarks of the Commissioner relating to illicit processing personal data. At the same time, the Commissioner reminds of the limited scope of certain measures, since some problems are systemic and cannot be eliminated by individual activities, but must be solved on a global, state level. The Commissioner sent recommendations and remarks to the Administration for the Execution of Criminal Sanctions after, in the second half of 2014, he supervised the application of the Law on Personal Data Protection in the Administration and Institutions for the Execution of Criminal Sanctions. The supervision showed numerous shortcomings and omissions related to the processing of personal data of persons deprived of their liberty, as well as visitors and employees. In addition to the shortcomings related to the inadmissible and excessive processing of personal data of visitors or excessively "transparent" processing of personal data of employees, uncontrolled video surveillance, the attitude towards data on health and mental condition of persons deprived of liberty deserved special attention. Although it is necessary, necessary and justified to process these data exclusively by the health services of the institute, the security services have also done so intensively. Cumulative files of convicted persons are kept inadequately secured and accessible to unauthorized persons, in certain cases, even persons deprived of liberty. It is necessary to ensure that sensitive data, subject to possible misuse, are adequately stored and made available exclusively to the competent services. Since both health data and data on convictions for criminal offenses under the law fall into the category of so-called, particularly sensitive data.

²³⁶ Повереник за заштиту равноправности, мишљења и препоруке:

<http://ravnopravnost.gov.rs/misljenja-i-preporuke/misljenja-i-preporuke-u-postupku-po-prituzbama/>, приступљено: 23.06.2016.

²³⁷ Саопштење Повереника за информације од јавног значаја и заштиту података о личности, презето са: <http://www.poverenik.rs/you/saopstenja-i-aktuelnosti.html>. 10.04.2016.





2.7. Questionnaire on aspects of recognition and response to discrimination application results

General information about the questionnaire:²³⁸ The sample included 90 officers (members) of the Administration for Execution of Criminal Sanctions of the Republic of Serbia, the Pozarevac-Zabela Penitentiary, the National Prison Administration of the Republic of Romania, the Prison in Timisoara and the Administration for the Execution of Sanctions of the Republic of Northern Macedonia. Home Idrizovo, Skopje, from the services for security, treatment, training and employment, general and health services. This questionnaire was given with the aim of identifying the existing knowledge of members of prison institutions when it comes to knowledge of all aspects related to the manifestations of discrimination in prisons. The questionnaire was filled in from 11.12.2020. until January 29, 2021. years. The results are shown in tables and graphs. General information about the questionnaire:

Table no. 1. Number of survey participants by services:

Name of service	Number of employees
Security service	45
Treatment service	22
Training and employment service	9
General Affairs Service	7
Health Care Service	7

Note: Prison police agents and prison police officers are integrated into the security service.

²³⁸ The questionnaire is the result of the project "Be without prejudice - recognizing and responding to discrimination in prisons" implemented by the Pozarevac-Zabela Penitentiary, Timisoara Prison, CPIP from Timisoara and Juridica Prima from Skopje, funded and supported by Erasmus +, Tempus foundations in the Republic of Serbia for the period 2019-2022.



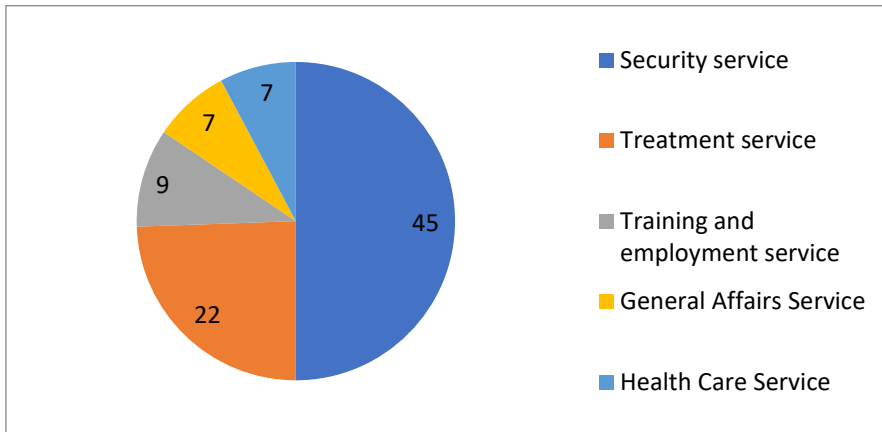


Table no. 2. Survey participants by positions:

Position	Number of employees
A member of the security service	45
Other civil servants	45

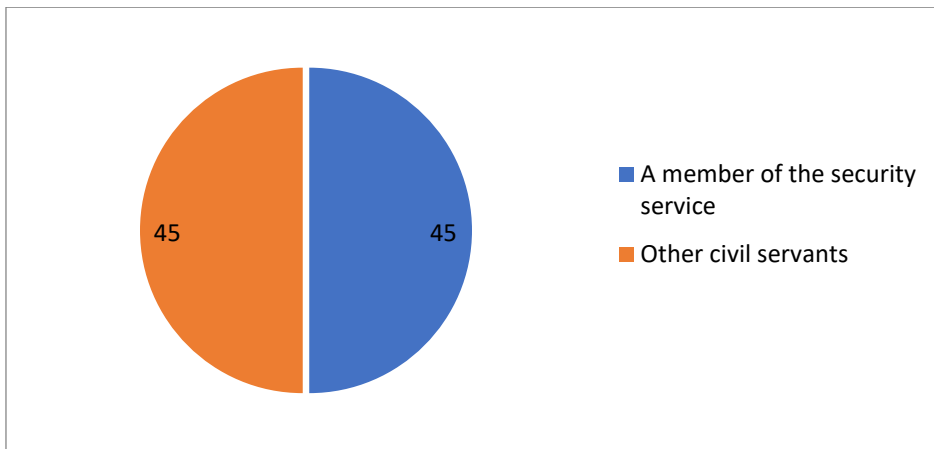


Table no. 3. Structure of respondents by gender.

Gender	Number of employees
Male	55
Female	35



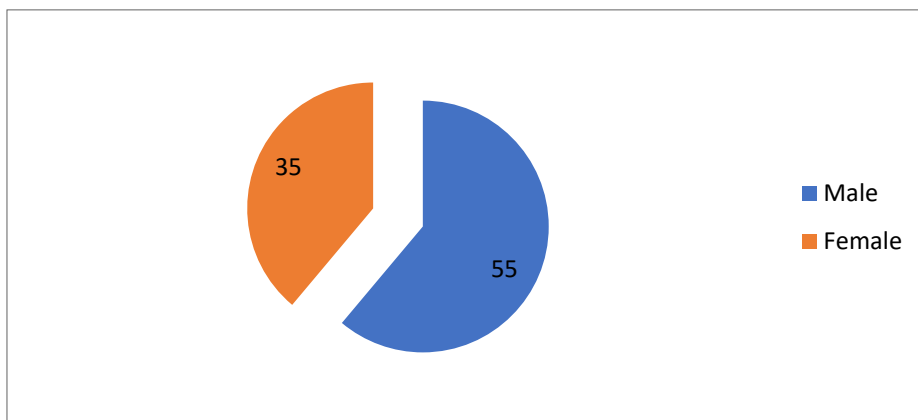


Table no. 4. Structure of respondents by level of education:

Education level	Number of employees
Middle	26
High	64

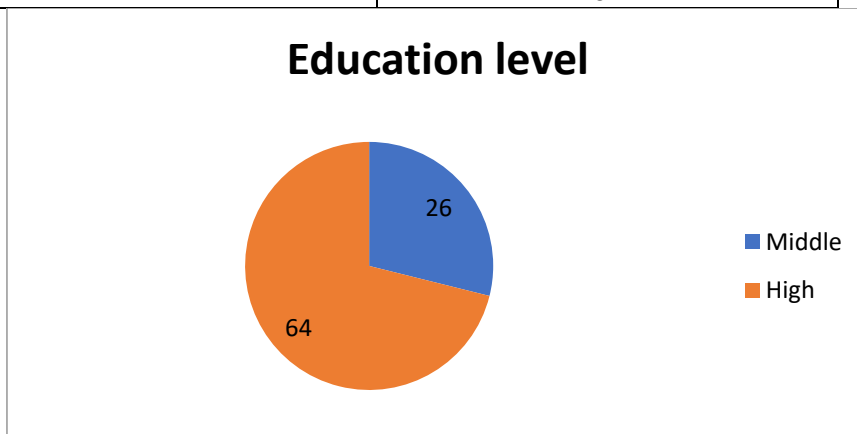


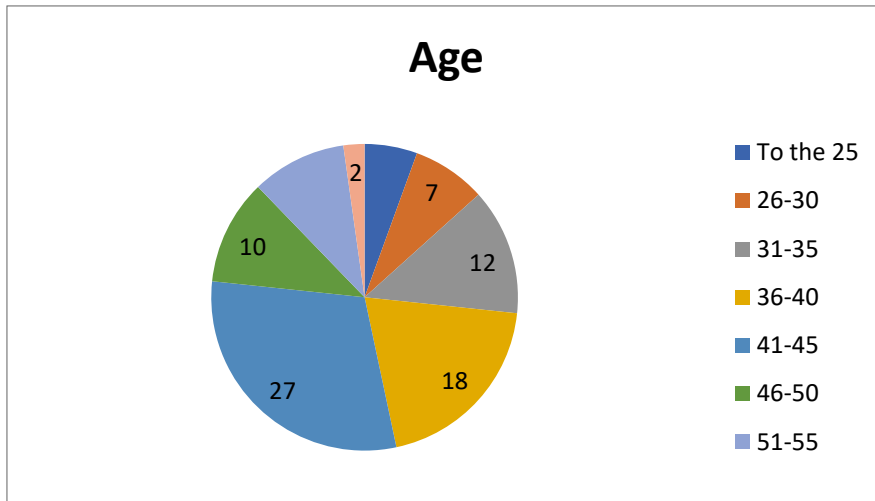
Table no. 5. Age structure of respondents.

Age	Number of employees
До 25	5
26-30	7
31-35	12
36-40	18
41-45	27





46-50	10
51-55	9
56 and more	2

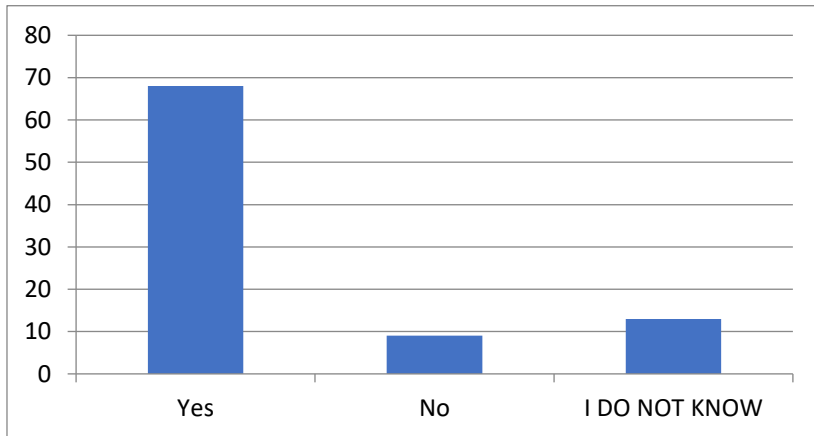


It is important for the concept of training to analyze the attitude towards a proactive approach and good cooperation with colleagues in preventing discrimination against persons deprived of their liberty.

1. In your opinion and your previous experience, practice, does the concept of current work have a good and efficient approach in relation to persons deprived of their liberty and understanding of their diversity and problems?

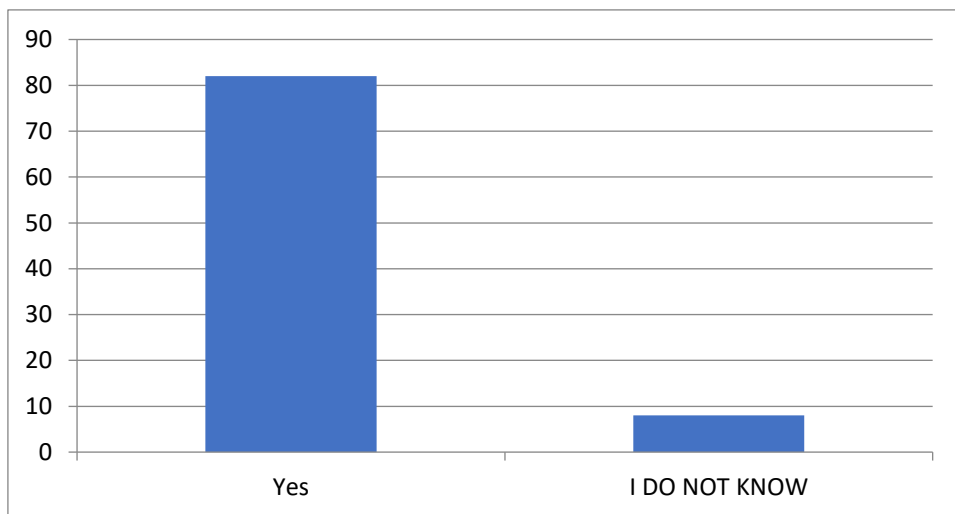
The answer	Number
Yes	68
No	9
I DO NOT KNOW	13





2. Do you think that understanding the problems of persons deprived of their liberty builds greater trust and prevents various conflicts that may arise?

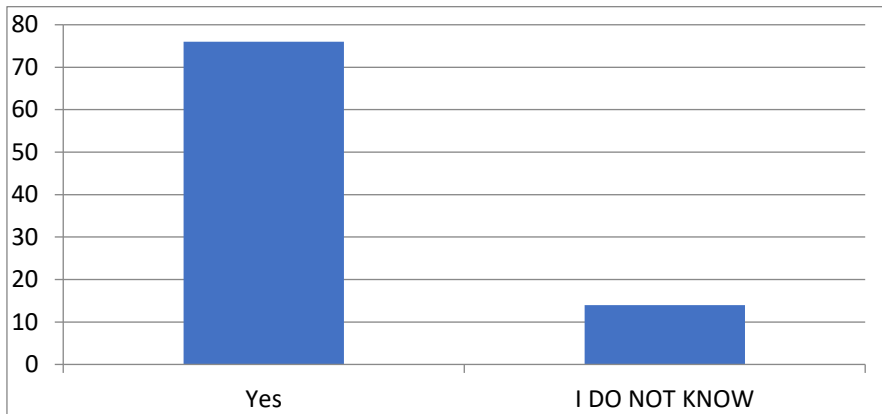
The answer	Number
Yes	82
I DO NOT KNOW	8





3. Are you ready to accept all changes in your operational work that include measures that would prevent the prevention of discrimination?

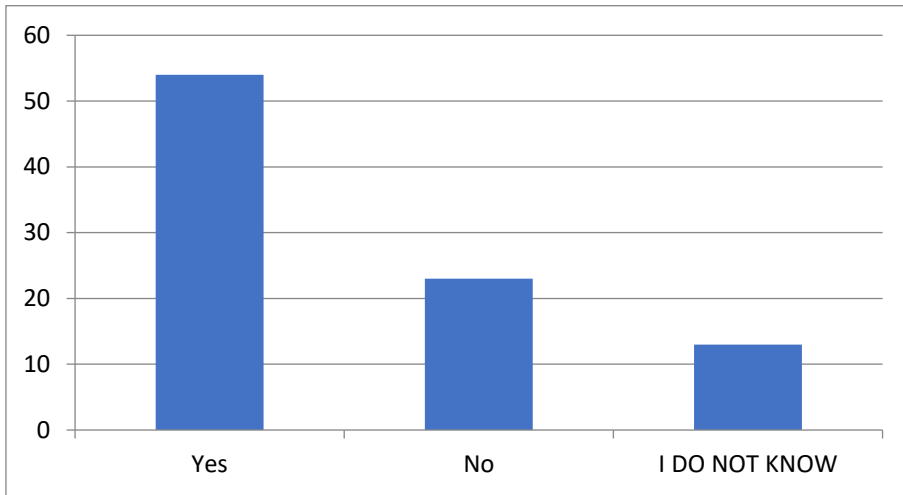
The answer	Number
Yes	76
I DO NOT KNOW	14



4. Do you think that in your organizational unit colleagues have the necessary level of general and security culture in working with vulnerable and marginalized groups of persons deprived of their liberty?

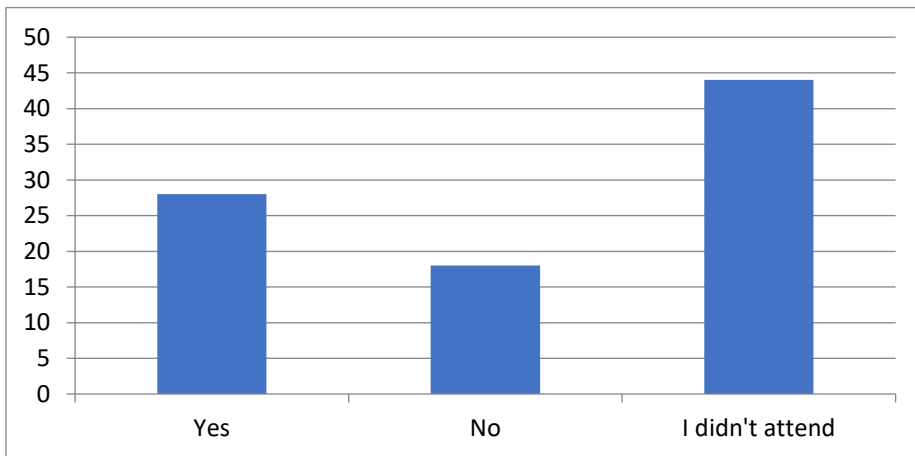
The answer	Number
Yes	54
No	23
I DO NOT KNOW	13





5. Are you satisfied with the number and quality of trainings you have completed regarding the prevention of discrimination or have you never attended them?

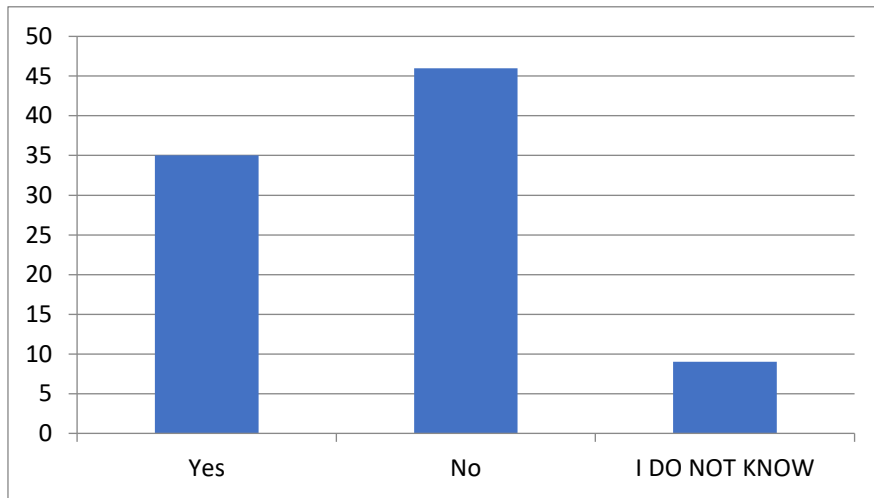
The answer	Number
Yes	28
No	18
I didn't attend	44





6. In your work, have you encountered anyone being discriminated against by your colleagues?

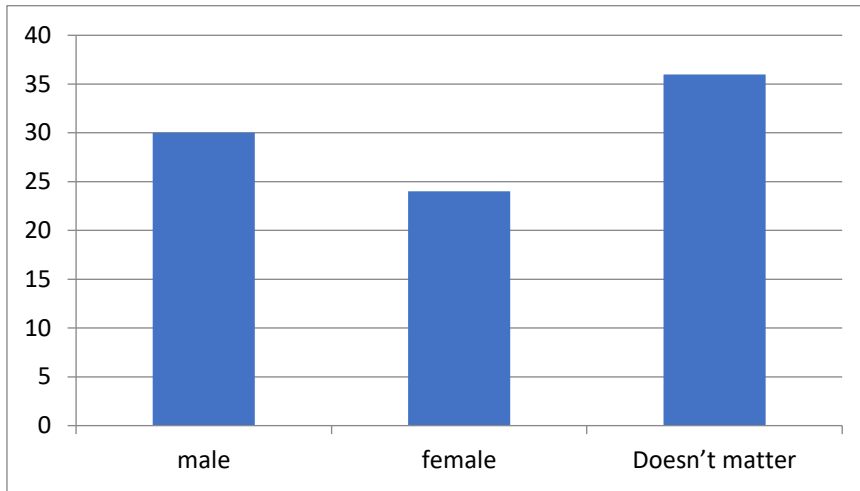
The answer	Number
Yes	35
No	46
I DO NOT KNOW	9



7. Would you rather be on shift, patrolling / going out on the field / visits with a male or female colleague while doing your job?

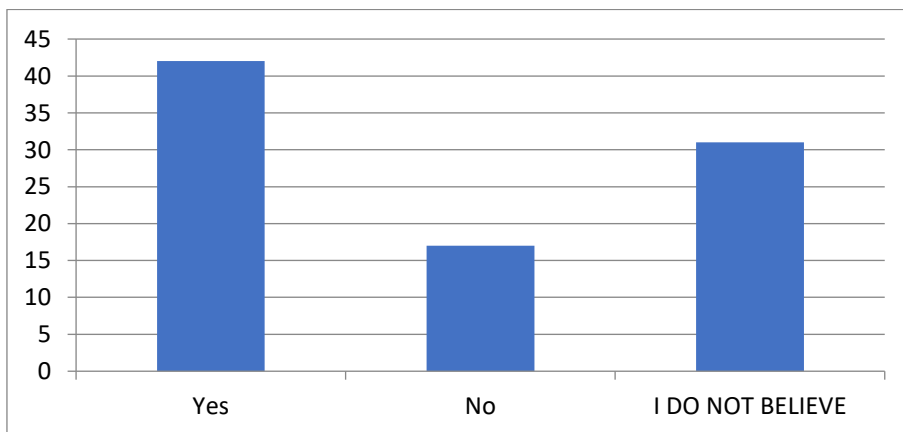
The answer	Number
male	30
female	24
Doesn't matter	36





8. Do you think that your female colleagues (security officers) can equally respond to all security challenges at work?

The answer	Number
Yes	42
No	17
I DO NOT BELIEVE	31

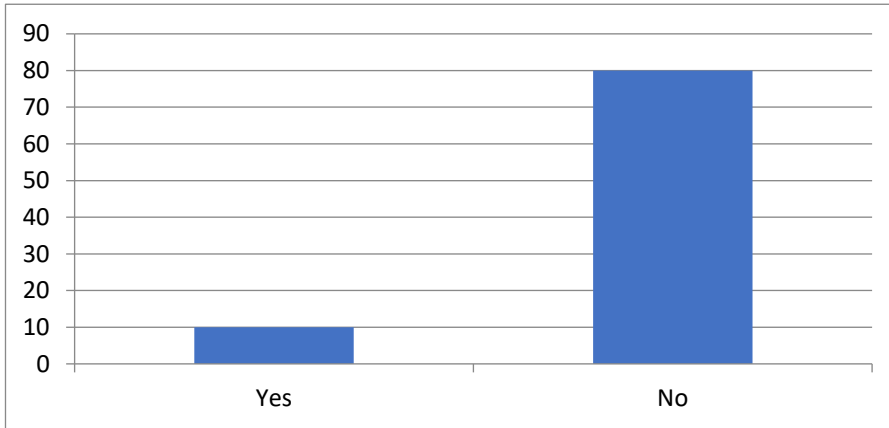


9. Have you ever been discriminated against as a colleague, and on what grounds?





The answer	Number
Yes	10
No	80

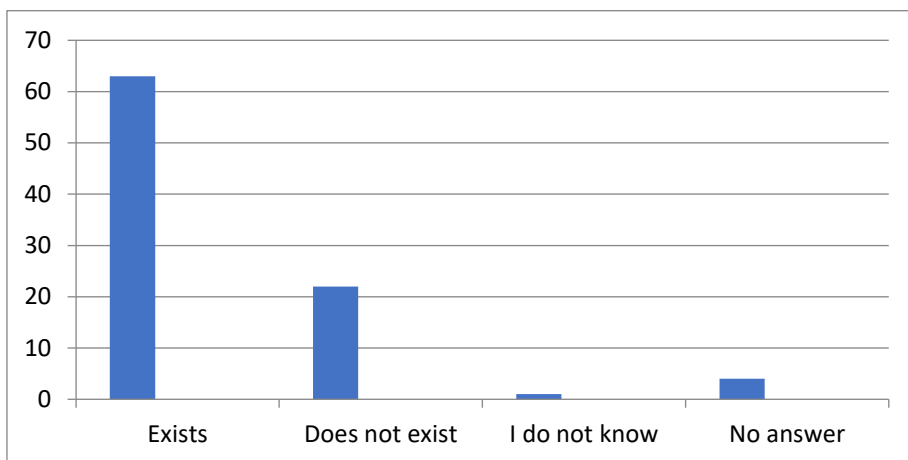


Listed: Based on physical appearance, tattoos, work status and job performance.

10. Are there any acts in the Directorate for the Execution of Criminal Sanctions that regulate the conduct, behaviour and image of members of the Security Service and other employees?

The answer	Number
Exists	63
Does not exist	22
I do not know	1
No answer	4





The aim of the questionnaire was to identify the existing knowledge of officers in prisons about discrimination, qualitative analysis of the content of defined and asked questions and answers, the following was noted. When asked what discrimination is and the requirement to describe yourself in your own words or through an example that is familiar to the participants from practice, the following was noted:

One group of respondents expects from the publication and future training for recognizing and responding to discrimination in prisons: 1) Better recognition of discrimination and adequate response; 2) Acquisition of new knowledge and exchange of experiences; 3) Raising the general level of awareness and acceptance of diversity; 4) Progress in interpersonal relationships; 5) Improving and improving jobs; 6) Easier recognition of discrimination. 7) Better treatment of employees and convicts; 8) More precise definition of discrimination in prison conditions; 9) Introduction to methods of recognizing and preventing discrimination; 10) Considering new aspects of recognizing and responding to discrimination.

Respondents recognize that persons deprived of their liberty are discriminated against on the basis of the following characteristics: Disability, religion, nation, gender, skin color, sexual orientation, race, age, political affiliation, marital and family status, level of education, social status, health, physical defects, material condition, physical appearance.

To the question in which prison situations or environments is there an increased risk of discrimination, the following generic answers were given?

In everyday activities.





Based on belonging to informal groups (fans), sexual orientation, race and nationality.
Grouping within an informal system.
In environments where punishment is served in groups, people of different financial status and religious beliefs.
Based on the committed crime.
In environments with a larger number of members of the same or similar socio-demographic characteristics, mentality, culture.
In connection with previous convictions.
Close closed type.
According to the position in the performance of work, pay.
Collective serving a sentence.

The most significant findings of the questionnaire. The questionnaire is designed so that it is predominantly filled in by members of the security service in prisons, because they are in the most direct contact with all categories of persons deprived of their liberty and are practically able to be the first to recognize and react to discrimination. Most respondents recognize current working methods as a good and effective approach to dealing with persons deprived of their liberty and understanding their diversity and problems. What is positive is that the vast majority of respondents recognize that understanding the problems of persons deprived of their liberty builds greater trust and prevents various conflicts that may arise in their daily work with them. It is positive that the majority of respondents are ready for changes in their work that would have a preventive effect on preventing discrimination.

A certain gender distance towards female employees in prisons was noticed, where 23 respondents believe that their colleagues do not have the necessary level of general and security culture in working with vulnerable and marginalized groups of persons deprived of their liberty. It is worrying that more than 50% of respondents have not attended any training in the field of human rights and response to discrimination. It is noteworthy that one third of the respondents point out that in their work they met someone who was discriminated against by her colleagues. Regarding the choice of working with a colleague in operational treatment, there is a certain parity, on the other hand over 50% of respondents state that they believe that colleagues (security officers) cannot equally respond to all security challenges at work. It is positive that 90% of respondents state that they were not personally discriminated against, but it is worrying that one third of respondents state that in the system of execution of criminal sanctions there are no acts regulating the conduct, behavior and image of members of the security service and other employees. that there is legal regulation states: ZIKS, Code of Conduct for Civil Servants,





Rulebook on House Rules in Penitentiary and OZ Rulebook on the manner of performing duties in the security service in prisons, Procedures in the services, Directive uniforms, Rulebook on the work of members of the security service, International legal regulations, Deontological code, Law 145/2019, Police Prison Statute, Code of Ethics, Rulebook on the conduct of security officers and other prison staff.

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https://www.pravda.gov.mk/Upload/Documents/Neoficijalen_precisten_tekst_ZIS_reduced.pdf	
Legea nr.145/2019 privind statutul polițiștilor de penitenciare;	
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CHAPTER III





3. AREAS OF WORK IN PRISONS WITH INCREASED RISK OF DISCRIMINATION

Author: Zoran Jovanovski

The Constitution of a legal and democratic state guarantees basic human rights and freedoms, so in our country in the Republic of Northern Macedonia, according to the Constitution, the right to prohibit discrimination is guaranteed, ie. "Any direct or indirect discrimination, incitement to discrimination and aiding discrimination on the grounds of sex, race, skin color, gender, belonging to a marginalized group, ethnicity, language, citizenship, social origin, religion or belief shall be prohibited." "belief, other types of beliefs, education, political affiliation, personal or social status, mental and physical disability, age, family or marital status, property status, health status or any other basis provided by law or a ratified international agreement."

In addition to this article, I will mention a few more that guarantee human rights and freedoms and will be useful in the following observations. Article 3 of the European Convention for the Protection of Human Rights and Freedoms against Torture - "No one shall be subjected to torture or to inhuman or degrading treatment or punishment." Thereafter, Article 5 Right to liberty and security 1. Everyone has the right to liberty and security of person. No one shall be deprived of his liberty save in the following cases and in accordance with a procedure prescribed by law: (a) the lawful detention of a person after conviction by a competent court; (b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law; (c) the lawful arrest or detention of a person effected for the purpose of bringing him before the competent legal authority on reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done so; (d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority; (e) the lawful detention of persons for the prevention of the spreading of infectious diseases, of persons of unsound mind, alcoholics or drug addicts or vagrants; (f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition. 2. Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and of any charge against him. 3. Everyone arrested or detained in accordance with the provisions of paragraph 1 (c) of this Article shall be brought promptly before a judge or other officer authorised by law to exercise judicial power and shall be entitled to trial





within a reasonable time or to release pending trial. Release may be conditioned by guarantees to appear for trial. 4. Everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful. 5. Everyone who has been the victim of arrest or detention in contravention of the provisions of this Article shall have an enforceable right to compensation.

ARTICLE 6 Right to a fair trial

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. Judgment shall be pronounced publicly but the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice. 2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law. 3. Everyone charged with a criminal offence has the following minimum rights: (a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him; (b) to have adequate time and facilities for the preparation of his defence; (c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require; (d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him; (e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

ARTICLE 7

No punishment without law 1. No one shall be held guilty of any criminal offence on account of any act or omission which did not constitute a criminal offence under national or international law at the time when it was committed. Nor shall a heavier penalty be imposed than the one that was applicable at the time the criminal offence was committed. 2. This Article shall not prejudice the trial and punishment of any person for any act or omission which, at the time when it was committed, was criminal according to the general principles of law recognised by civilised nations."²³⁹

²³⁹ https://www.echr.coe.int/documents/convention_eng.pdf





As we can see, in fact human rights and freedoms are sufficiently guaranteed on a piece of paper since the Convention on Human Rights and Freedoms and its ratification, but is that so in practice? Are those rights and freedoms respected, guaranteed by a ratified document everywhere, even in our country? Is the ban on discrimination respected in all places, even in prisons?

3.1. Roma social security and the risk of discrimination in prisons

The Republic of Northern Macedonia, as a legal and democratic country, guarantees equal treatment for the Roma as well as for all its citizens. We are constantly working to integrate the Roma in our society, and their inclusion in every sphere. Thus, the "Strategy for Roma in the Republic of Macedonia 2014-2020" is one of the documents that aims to equate Roma with other ethnic communities in our country and to receive equal treatment in every field as every other citizen of our country.

In addition to this strategy, there are several associations established for the protection and integration of Roma in our country.

As international documents and norms, I will first mention the "Convention on Human Rights and Freedoms", which guarantees the rights and freedoms of all, including the Roma, without discriminating on any basics.

Then, the European Center for Roma Rights, an international Roma-led organization involved in a number of activities to fight Roma phobia and human rights abuses. Includes strategic expertise, international advocacy, research and policy development, news coverage of Roma rights, and training of Roma activists. The European Center for Roma Rights is a member of the Helsinki Committee for Human Rights and has advisory status to the Council of Europe, as well as to the United Nations Economic and Social Council. The organization was founded in 1996 in Budapest and is headquartered in Brussels.²⁴⁰

Their story - Founded in the mid 1990's by activists inspired by the legal victories of the civil rights movement in the United States, we have come a long way in the fight for

²⁴⁰https://en.wikipedia.org/wiki/European_Roma_Rights_Centre





equal rights for Roma. Though the names and faces have changed, the European Center for Roma Rights's commitment to fighting discrimination has remained constant.

After a landmark victory involving a Romani man winning a police brutality case in Bulgaria, activists and human rights lawyers from the Open Society Foundation started the European Center for Roma Rights. The center was the first strategic law organization working on Roma Rights in Europe, and was partly inspired by the successes of the National Association for the Advancement of Colored People in the Civil Rights movement in the United States.

And then, in September 25, 1996, the European Convention of Human Rights in Strasbourg turned down the case of Buckley v. The United Kingdom. It was the first case ever initiated by a British Romani applicant and was to decide whether British authorities had violated the right to respect for the home and family life of the applicant, Ms. June Buckley, by refusing to give her permission to station permanently, on her own land, caravans in which she had been living together with her family.

Finally, their first victory - The Czech Constitutional Court ruled that a Civil Court had failed to deliver justice to Roma who had requested their case involving forced eviction and deportation be heard before a judge.

The next was - **FIRST CASE ON HOUSING RIGHTS AT EUROPEAN LEVEL.**

One year after we lodged this case with the European Committee of Social Rights, the Committee found Italy in violation of its human rights obligations, including by forcibly evicting Roma. The battle for housing rights for Rome has only intensified since.

STRATEGIC LITIGATION OF EUROPEAN ROMA RIGHTS CENTER:

„We take racists to court. The cases we take across Europe are designed to expose and eliminate discriminatory structures that violate the rights of Roma. We support cases in domestic and international courts, as well as before international bodies, committees and tribunals.“²⁴¹

Although the rights of the Roma are guaranteed, discrimination takes place in some areas, including prisons. Thus, it is worrying that the violation of their rights begins with

²⁴¹<http://www.errc.org/>





the initiation of criminal proceedings and lasts until the end and then continues in the institution where they are housed to serve their sentences.

There are reports of cases where, even during the apprehension and interrogation of the Roma, the police officers led them to confess to the crimes and as we know, everyone is innocent until proven otherwise and no one should be led or tortured, forced to confess to a crime which he did not do.

In addition to the violation of the right to prohibition of discrimination, Roma face inhuman and brutal treatment, as well as failure to provide adequate health care, which can be confirmed by the following facts, according to the data of the Directorate for Execution of Sanctions, Roma represent 16% of the prison population in the Republic of Northern Macedonia. At the same time, they accounted for 50% of prison deaths in 2017 (four out of eight).

Severe crimes are likewise committed in developed countries, where the conditions are far better than the ones in our country, which leads to the conclusion that the severity of the crime has absolutely no connection with the meeting of the established standards for serving a sentence. Having in mind all the international conventions that our country has ratified, and that refer precisely to the need for humane treatment of each individual (while imposing certain standards), responsibility of the competent institutions is completely obvious. Namely, if there are humane conditions provided, whereby they would be able to fulfil their daily human needs in the most dignified way, then the chances for these persons to develop awareness, desire and willingness to cooperate are far greater. Such conditions would further contribute to a significant reduction of the violence and the conflicts among the prisoners. Speaking of humane conditions, it is necessary to clarify what we actually mean by this term, that is, it includes the provision of proper accommodation, food and water, access to light, fresh air, health care, as well as the organization of certain physical activities or workshops. However, anything that is the complete opposite to the human conditions (subhuman conditions) will result in an anomaly in the system, that is, the result would be an increase in the revolt, violence and aggression, with a conclusive reaction that such conditions would be a “fertile ground” for further spread of crime.

The right to health as a basic human right is primarily recognized and guaranteed by international law, i.e. by numerous conventions and declarations, and further by the constitutions and laws of the nation states. The health statistics in our country are not disaggregated by ethnicity, and the competent health institutions do not have adequate data on the health status of Roma. Research as well as the work of civil society organizations are the only source of data on the current situation in Roma communities in terms of their health. In general, most Roma are not able to choose a family doctor on their own, and a





high percentage of those suffering from chronic diseases are not able to provide the necessary medication. They also face insufficient and vague explanations for their health condition, are not able to cover the co-payment for health services, and in some cases they are not satisfied with the attitude of the health staff towards them, primarily due to prejudices and stereotypes that exist in society. Regarding the health situation in the prisons themselves, we were not able to see discrimination or unequal treatment compared to other prisoners of other ethnicities, but the cases of poisoning and death of these persons must not be neglected. The first such case¹⁶ in our country dates back to 2010, and was finally resolved after seven years. Andrias Redzepov (21), Yusinov Erdal (25), Sutkie Mustafafova (46) and Bekim Demir (39), are the four people who died in our prisons in 2017, due to lack of adequate health care and care. Two of these cases were overdose with a combination of methadone and benzodiazepine (synergistic effect). Methadone poisoning was cited as the cause of Andrias' death. However, Redzepov's mother claimed that her son had been beaten by prison guards before he died, and this was confirmed by the representative of the Roma community in Suto Orizari, Gege Demirovski, saying that there was evidence that prison guards brutally beat Redzepov on the stairs. the prison, before taking him to a room where they continued to harass him. The parents of the deceased boy also blamed the prison authorities for the failure to provide medical assistance on time, but also for not being informed about the condition and death of their son by the prison service, given the fact that they found out about the death by phone call from another prisoner. Furthermore, European Roma Rights Centre sources claim that in Yuseinov's case, the doctor gave an unknown dose of unmarked over-the-counter pills, which he had been receiving until the day he died. According to testimonies, four hours before his death, Yusinov asked for first aid, but did not receive it. In 2017, Bekim Demir and Sutkie Mustafafova also died in Idrizovo prison. Bekim Demir officially died of an overdose. His death was caused by poisoning with Prazin tablets after he was given an inappropriate dose by medical staff. Again, this case is mysterious, as he contacted his family a few hours before his death, complaining of difficulty breathing after a prison doctor gave him two injections that later left him paralyzed. He asked his family to come to the prison and help him. Bekim served 3 years imprisonment for theft and had no serious health problems before being admitted to the Idrizovo Penitentiary. Sutkie Mustafafova, on the other hand, died due to obvious medical negligence, according to the information that speaks of her previous health complications being ignored. Accusing her of falsifying the disease, the staff withdrew timely medical care. Her psychological condition was cited as an excuse when entering the institution, which is again absurd, considering that if it was not calculated it should not be placed in such an institution. The autopsy results show that she had a high dose of benzodiazepine in her body. Hence, the European Roma Rights Centre considers that the prison authorities have failed to promptly investigate possible negligence





in methadone administration and the timeliness of emergency medical care. Faced with the devastating reality of Roma prisoners, we believe that the tightening of prison codes, laws in the field of protection against discrimination, exercise of all procedural rights in criminal proceedings, as well as the conditions for serving a sentence are crucial.²⁴²

Of equal importance, in addition to respect for basic human rights, is the resocialization of Roma in prisons.

It is the basic determinant of the execution of sanctions, including short sentences of deprivation of liberty, and is a requirement for dealing with the convicted person that will be fully understood by the needs of his correction and re-education. The individual must work alone to eliminate negative, antisocial tendencies, which will facilitate his own social reintegration into society.

3.2. Treatment of Roma staff towards Roma

Persons deprived of their liberty are deprived of certain rights and freedoms guaranteed by the Constitution and international norms, but still need to receive a fair and just trial, without coercion and coercion to confess to a crime, and their dignity and integrity must be preserved from the very beginning of the initiation of the procedure, until it ends, as well as during the serving of the prison sentences if it is proven that they are guilty. At this point, we will look at the Standard Minimum Rules for the Treatment of Prisoners known as Mandela Rules.

Adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

Basic principle:

6. (1) The following rules shall be applied impartially. There shall be no discrimination on grounds of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.

²⁴²https://msp.mk/wp-content/uploads/2020/01/brosura_so_cip.pdf





(2) On the other hand, it is necessary to respect the religious beliefs and moral precepts of the group to which a prisoner belongs.

Register

7. (1) In every place where persons are imprisoned there shall be kept a bound registration book with numbered pages in which shall be entered in respect of each prisoner received:

- (a) Information concerning his identity;
- (b) The reasons for his commitment and the authority therefor;
- (c) The day and hour of his admission and release.

(2) No person shall be received in an institution without a valid commitment order of which the details shall have been previously entered in the register.

Separation of categories

8. The different categories of prisoners shall be kept in separate institutions or parts of institutions taking account of their sex, age, criminal record, the legal reason for their detention and the necessities of their treatment. Thus,

- (a) Men and women shall so far as possible be detained in separate institutions; in an institution which receives both men and women the whole of the premises allocated to women shall be entirely separate;
- (b) Untried prisoners shall be kept separate from convicted prisoners;
- (c) Persons imprisoned for debt and other civil prisoners shall be kept separate from persons imprisoned by reason of a criminal offence;
- (d) Young prisoners shall be kept separate from adults.

Accommodation

9. (1) Where sleeping accommodation is in individual cells or rooms, each prisoner shall occupy by night a cell or room by himself. If for special reasons, such as temporary overcrowding, it becomes necessary for the central prison administration to make an exception to this rule, it is not desirable to have two prisoners in a cell or room.

(2) Where dormitories are used, they shall be occupied by prisoners carefully selected as being suitable to associate with one another in those conditions. There shall be regular supervision by night, in keeping with the nature of the institution.





10. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health, due regard being paid to climatic conditions and particularly to cubic content of air, minimum floor space, lighting, heating and ventilation.

11. In all places where prisoners are required to live or work,

(a) The windows shall be large enough to enable the prisoners to read or work by natural light, and shall be so constructed that they can allow the entrance of fresh air whether or not there is artificial ventilation;

(b) Artificial light shall be provided sufficient for the prisoners to read or work without injury to eyesight.

12. The sanitary installations shall be adequate to enable every prisoner to comply with the needs of nature when necessary and in a clean and decent manner.

13. Adequate bathing and shower installations shall be provided so that every prisoner may be enabled and required to have a bath or shower, at a temperature suitable to the climate, as frequently as necessary for general hygiene according to season and geographical region, but at least once a week in a temperate climate.

14. All parts of an institution regularly used by prisoners shall be properly maintained and kept scrupulously clean at all times.

Personal hygiene

15. Prisoners shall be required to keep their persons clean, and to this end they shall be provided with water and with such toilet articles as are necessary for health and cleanliness.

16. In order that prisoners may maintain a good appearance compatible with their self-respect, facilities shall be provided for the proper care of the hair and beard, and men shall be enabled to shave regularly.

Clothing and bedding

17. (1) Every prisoner who is not allowed to wear his own clothing shall be provided with an outfit of clothing suitable for the climate and adequate to keep him in good health. Such clothing shall in no manner be degrading or humiliating.

(2) All clothing shall be clean and kept in proper condition. Underclothing shall be changed and washed as often as necessary for the maintenance of hygiene.





(3) In exceptional circumstances, whenever a prisoner is removed outside the institution for an authorized purpose, he shall be allowed to wear his own clothing or other inconspicuous clothing.

18. If prisoners are allowed to wear their own clothing, arrangements shall be made on their admission to the institution to ensure that it shall be clean and fit for use.

19. Every prisoner shall, in accordance with local or national standards, be provided with a separate bed, and with separate and sufficient bedding which shall be clean when issued, kept in good order and changed often enough to ensure its cleanliness.

Food

20. (1) Every prisoner shall be provided by the administration at the usual hours with food of nutritional value adequate for health and strength, of wholesome quality and well prepared and served.

(2) Drinking water shall be available to every prisoner whenever he needs it.

Exercise and sport

21. (1) Every prisoner who is not employed in outdoor work shall have at least one hour of suitable exercise in the open air daily if the weather permits.

(2) Young prisoners, and others of suitable age and physique, shall receive physical and recreational training during the period of exercise. To this end space, installations and equipment should be provided.

Medical services

22. (1) At every institution there shall be available the services of at least one qualified medical officer who should have some knowledge of psychiatry. The medical services should be organized in close relationship to the general health administration of the community or nation. They shall include a psychiatric service for the diagnosis and, in proper cases, the treatment of states of mental abnormality.

(2) Sick prisoners who require specialist treatment shall be transferred to specialized institutions or to civil hospitals. Where hospital facilities are provided in an institution, their equipment, furnishings and pharmaceutical supplies shall be proper for the medical care and treatment of sick prisoners, and there shall be a staff of suitable trained officers.

(3) The services of a qualified dental officer shall be available to every prisoner.





23. (1) In women's institutions there shall be special accommodation for all necessary pre-natal and post-natal care and treatment. Arrangements shall be made wherever practicable for children to be born in a hospital outside the institution. If a child is born in prison, this fact shall not be mentioned in the birth certificate.

(2) Where nursing infants are allowed to remain in the institution with their mothers, provision shall be made for a nursery staffed by qualified persons, where the infants shall be placed when they are not in the care of their mothers.

24. The medical officer shall see and examine every prisoner as soon as possible after his admission and thereafter as necessary, with a view particularly to the discovery of physical or mental illness and the taking of all necessary measures; the segregation of prisoners suspected of infectious or contagious conditions; the noting of physical or mental defects which might hamper rehabilitation, and the determination of the physical capacity of every prisoner for work.

25. (1) The medical officer shall have the care of the physical and mental health of the prisoners and should daily see all sick prisoners, all who complain of illness, and any prisoner to whom his attention is specially directed.

(2) The medical officer shall report to the director whenever he considers that a prisoner's physical or mental health has been or will be injuriously affected by continued imprisonment or by any condition of imprisonment.

26. (1) The medical officer shall regularly inspect and advise the director upon:

- (a) The quantity, quality, preparation and service of food;
- (b) The hygiene and cleanliness of the institution and the prisoners;
- (c) The sanitation, heating, lighting and ventilation of the institution;
- (d) The suitability and cleanliness of the prisoners' clothing and bedding;
- (e) The observance of the rules concerning physical education and sports, in cases where there is no technical personnel in charge of these activities.

(2) The director shall take into consideration the reports and advice that the medical officer submits according to rules 25 (2) and 26 and, in case he concurs with the recommendations made, shall take immediate steps to give effect to those recommendations; if they are not within his competence or if he does not concur with them, he shall immediately submit his own report and the advice of the medical officer to higher authority.





Discipline and punishment

27. Discipline and order shall be maintained with firmness, but with no more restriction than is necessary for safe custody and well-ordered community life.

28. (1) No prisoner shall be employed, in the service of the institution, in any disciplinary capacity.

(2) This rule shall not, however, impede the proper functioning of systems based on self-government, under which specified social, educational or sports activities or responsibilities are entrusted, under supervision, to prisoners who are formed into groups for the purposes of treatment.

29. The following shall always be determined by the law or by the regulation of the competent administrative authority:

- (a) Conduct constituting a disciplinary offence;
- (b) The types and duration of punishment which may be inflicted;
- (c) The authority competent to impose such punishment.

30. (1) No prisoner shall be punished except in accordance with the terms of such law or regulation, and never twice for the same offence.

(2) No prisoner shall be punished unless he has been informed of the offence alleged against him and given a proper opportunity of presenting his defence. The competent authority shall conduct a thorough examination of the case.

(3) Where necessary and practicable the prisoner shall be allowed to make his defence through an interpreter.

31. Corporal punishment, punishment by placing in a dark cell, and all cruel, inhuman or degrading punishments shall be completely prohibited as punishments for disciplinary offences.

32. (1) Punishment by close confinement or reduction of diet shall never be inflicted unless the medical officer has examined the prisoner and certified in writing that he is fit to sustain it.

(2) The same shall apply to any other punishment that may be prejudicial to the physical or mental health of a prisoner. In no case may such punishment be contrary to or depart from the principle stated in rule 31.





(3) The medical officer shall visit daily prisoners undergoing such punishments and shall advise the director if he considers the termination or alteration of the punishment necessary on grounds of physical or mental health.

Instruments of restraint

33. Instruments of restraint, such as handcuffs, chains, irons and strait-jackets, shall never be applied as a punishment. Furthermore, chains or irons shall not be used as restraints. Other instruments of restraint shall not be used except in the following circumstances:

- (a) As a precaution against escape during a transfer, provided that they shall be removed when the prisoner appears before a judicial or administrative authority;
- (b) On medical grounds by direction of the medical officer;
- (c) By order of the director, if other methods of control fail, in order to prevent a prisoner from injuring himself or others or from damaging property; in such instances the director shall at once consult the medical officer and report to the higher administrative authority.

34. The patterns and manner of use of instruments of restraint shall be decided by the central prison administration. Such instruments must not be applied for any longer time than is strictly necessary.

Information to and complaints by prisoners

35. (1) Every prisoner on admission shall be provided with written information about the regulations governing the treatment of prisoners of his category, the disciplinary requirements of the institution, the authorized methods of seeking information and making complaints, and all such other matters as are necessary to enable him to understand both his rights and his obligations and to adapt himself to the life of the institution.

(2) If a prisoner is illiterate, the aforesaid information shall be conveyed to him orally.

36. (1) Every prisoner shall have the opportunity each week day of making requests or complaints to the director of the institution or the officer authorized to represent him.

(2) It shall be possible to make requests or complaints to the inspector of prisons during his inspection. The prisoner shall have the opportunity to talk to the inspector or to any other inspecting officer without the director or other members of the staff being present.

(3) Every prisoner shall be allowed to make a request or complaint, without censorship as to substance but in proper form, to the central prison administration, the judicial authority or other proper authorities through approved channels.





(4) Unless it is evidently frivolous or groundless, every request or complaint shall be promptly dealt with and replied to without undue delay.

Contact with the outside world

37. Prisoners shall be allowed under necessary supervision to communicate with their family and reputable friends at regular intervals, both by correspondence and by receiving visits.

38. (1) Prisoners who are foreign nationals shall be allowed reasonable facilities to communicate with the diplomatic and consular representatives of the State to which they belong.

(2) Prisoners who are nationals of States without diplomatic or consular representation in the country and refugees or stateless persons shall be allowed similar facilities to communicate with the diplomatic representative of the State which takes charge of their interests or any national or international authority whose task it is to protect such persons.

39. Prisoners shall be kept informed regularly of the more important items of news by the reading of newspapers, periodicals or special institutional publications, by hearing wireless transmissions, by lectures or by any similar means as authorized or controlled by the administration.

Books

40. Every institution shall have a library for the use of all categories of prisoners, adequately stocked with both recreational and instructional books, and prisoners shall be encouraged to make full use of it.

Religion

41. (1) If the institution contains a sufficient number of prisoners of the same religion, a qualified representative of that religion shall be appointed or approved. If the number of prisoners justifies it and conditions permit, the arrangement should be on a full-time basis.

(2) A qualified representative appointed or approved under paragraph (1) shall be allowed to hold regular services and to pay pastoral visits in private to prisoners of his religion at proper times.

(3) Access to a qualified representative of any religion shall not be refused to any prisoner. On the other hand, if any prisoner should object to a visit of any religious representative, his attitude shall be fully respected.





42. So far as practicable, every prisoner shall be allowed to satisfy the needs of his religious life by attending the services provided in the institution and having in his possession the books of religious observance and instruction of his denomination.

Retention of prisoners' property

43. (1) All money, valuables, clothing and other effects belonging to a prisoner which under the regulations of the institution he is not allowed to retain shall on his admission to the institution be placed in safe custody. An inventory thereof shall be signed by the prisoner. Steps shall be taken to keep them in good condition.

(2) On the release of the prisoner all such articles and money shall be returned to him except in so far as he has been authorized to spend money or send any such property out of the institution, or it has been found necessary on hygienic grounds to destroy any article of clothing. The prisoner shall sign a receipt for the articles and money returned to him.

(3) Any money or effects received for a prisoner from outside shall be treated in the same way.

(4) If a prisoner brings in any drugs or medicine, the medical officer shall decide what use shall be made of them.

Notification of death, illness, transfer, etc.

44. (1) Upon the death or serious illness of, or serious injury to a prisoner, or his removal to an institution for the treatment of mental affections, the director shall at once inform the spouse, if the prisoner is married, or the nearest relative and shall in any event inform any other person previously designated by the prisoner.

(2) A prisoner shall be informed at once of the death or serious illness of any near relative. In case of the critical illness of a near relative, the prisoner should be authorized, whenever circumstances allow, to go to his bedside either under escort or alone.

(3) Every prisoner shall have the right to inform at once his family of his imprisonment or his transfer to another institution.

Removal of prisoners

45. (1) When the prisoners are being removed to or from an institution, they shall be exposed to public view as little as possible, and proper safeguards shall be adopted to protect them from insult, curiosity and publicity in any form.





(2) The transport of prisoners in conveyances with inadequate ventilation or light, or in any way which would subject them to unnecessary physical hardship, shall be prohibited.

(3) The transport of prisoners shall be carried out at the expense of the administration and equal conditions shall obtain for all of them.

Institutional personnel

46. (1) The prison administration shall provide for the careful selection of every grade of the personnel, since it is on their integrity, humanity, professional capacity and personal suitability for the work that the proper administration of the institutions depends.

(2) The prison administration shall constantly seek to awaken and maintain in the minds both of the personnel and of the public the conviction that this work is a social service of great importance, and to this end all appropriate means of informing the public should be used.

(3) To secure the foregoing ends, personnel shall be appointed on a full-time basis as professional prison officers and have civil service status with security of tenure subject only to good conduct, efficiency and physical fitness. Salaries shall be adequate to attract and retain suitable men and women; employment benefits and conditions of service shall be favourable in view of the exacting nature of the work.

47. (1) The personnel shall possess an adequate standard of education and intelligence.

(2) Before entering on duty, the personnel shall be given a course of training in their general and specific duties and be required to pass theoretical and practical tests.

(3) After entering on duty and during their career, the personnel shall maintain and improve their knowledge and professional capacity by attending courses of in-service training to be organized at suitable intervals.

48. All members of the personnel shall at all times so conduct themselves and perform their duties as to influence the prisoners for good by their example and to command their respect.

49. (1) So far as possible, the personnel shall include a sufficient number of specialists such as psychiatrists, psychologists, social workers, teachers and trade instructors.

(2) The services of social workers, teachers and trade instructors shall be secured on a permanent basis, without thereby excluding part-time or voluntary workers.





50. (1) The director of an institution should be adequately qualified for his task by character, administrative ability, suitable training and experience.

(2) He shall devote his entire time to his official duties and shall not be appointed on a part-time basis.

(3) He shall reside on the premises of the institution or in its immediate vicinity.

(4) When two or more institutions are under the authority of one director, he shall visit each of them at frequent intervals. A responsible resident official shall be in charge of each of these institutions.

51. (1) The director, his deputy, and the majority of the other personnel of the institution shall be able to speak the language of the greatest number of prisoners, or a language understood by the greatest number of them.

(2) Whenever necessary, the services of an interpreter shall be used.

52. (1) In institutions which are large enough to require the services of one or more full-time medical officers, at least one of them shall reside on the premises of the institution or in its immediate vicinity.

(2) In other institutions the medical officer shall visit daily and shall reside near enough to be able to attend without delay in cases of urgency.

53. (1) In an institution for both men and women, the part of the institution set aside for women shall be under the authority of a responsible woman officer who shall have the custody of the keys of all that part of the institution.

(2) No male member of the staff shall enter the part of the institution set aside for women unless accompanied by a woman officer.

(3) Women prisoners shall be attended and supervised only by women officers. This does not, however, preclude male members of the staff, particularly doctors and teachers, from carrying out their professional duties in institutions or parts of institutions set aside for women.

54. (1) Officers of the institutions shall not, in their relations with the prisoners, use force except in self-defence or in cases of attempted escape, or active or passive physical resistance to an order based on law or regulations. Officers who have recourse to force must use no more than is strictly necessary and must report the incident immediately to the director of the institution.





(2) Prison officers shall be given special physical training to enable them to restrain aggressive prisoners.

(3) Except in special circumstances, staff performing duties which bring them into direct contact with prisoners should not be armed. Furthermore, staff should in no circumstances be provided with arms unless they have been trained in their use.

Inspection

55. There shall be a regular inspection of penal institutions and services by qualified and experienced inspectors appointed by a competent authority. Their task shall be in particular to ensure that these institutions are administered in accordance with existing laws and regulations and with a view to bringing about the objectives of penal and correctional services.²⁴³

The above rules must be followed in prisons by prison staff, ie. the police officers who are most responsible and whose primary duty is to protect the rights and freedoms of citizens.

However, in the Republic of Northern Macedonia, the facts indicate that the situation is not as great as on paper and that there are shortcomings in our country in implementing these rights in prisons.

The most famous cases of police brutality are Sulejmanov against Republic of Northern Macedonia, Jashar against Republic of Northern Macedonia, Xheladinov against Republic of Northern Macedonia. In the cases of Sulejmanov v. Republic of Northern Macedonia and Jashar v. Republic of Northern Macedonia, the applicants were represented by the European Roma Right Centre. They alleged that they had been ill-treated by the police, causing psychological suffering due to torture, inhuman and degrading treatment, and that no investigation had been carried out by the public prosecutor. Unfortunately, the statistics also refer to other cases in which police brutality was found, which refers to the material part (finding that the applicant was tortured or other ill-treated) and the procedural part (not conducting an investigation and not taking any other measures and activities in relation to subjecting the applicant to torture or ill-treatment). The applicant (Sulejmanov v. Republic of Northern Macedonia) claimed EUR 20,000 in respect of non-pecuniary damage for the pain, physical injury, frustration, distress and helplessness he had suffered

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https://www.unodc.org/pdf/criminal_justice/UN_Standard_Minimum_Rules_for_the_Treatment_of_Prisoners.pdf





as a result of police harassment while in a very vulnerable position, at the mercy of the police. He also claimed that there were omissions in the subsequent investigation carried out by the domestic authorities. He further referred to his Roma origin, emphasizing that his case is not unique in the former Yugoslav Republic of Macedonia. Finally, the Court was asked to take into account the alleged systemic nature of the breach the assessment of non-pecuniary damage and that the award of a higher amount will affect the respondent Government to take a stronger stance against police torture against the Roma community in the future. Considering that the competent authorities do not take any investigative measures, and the Public Prosecutor's Office does not act on criminal charges against police officers (as in the cases of *Jashar v. Republic of Northern Macedonia*, *Sulejmanov v. Republic of Northern Macedonia*, *Xheladinov and others v. Republic of Northern Macedonia*, *Trajkoski v. Republic of Northern Macedonia*, *El Masri v. Republic of Northern Macedonia*), The European Roma Rights Centre concluded in these cases that there had been no investigation into the applicant's allegations that he had been ill-treated by the police, and that there had been a violation of Article 3 of the Convention in the procedural part. The European Roma Rights Centre further concluded that the violent treatment which was the cause of significant physical pain, fear, agony and mental suffering constituted torture infringing Article 3 of the European Convention of Human Rights in substance. International law is what has contributed most to the torture or ill-treatment considered to be an extremely serious form of violation of human rights and freedoms, which requires an appropriate investigation and harsh condemnation of the perpetrators. Speaking of the international legal regularity of the prohibition of acts of torture and other forms of cruel, inhuman and degrading treatment or punishment, of course the Universal Declaration of Human Rights adopted in 1948 is the most basic document which provides that "No one he may be subjected to torture or to cruel, inhuman or degrading treatment or punishment (Article 5). At European level, the prohibition of torture is enshrined in the European Convention for the Protection of Human Rights, adopted by the Council of Europe in 1950. Certain provisions prohibiting torture and other cruel, inhuman or degrading treatment or punishment are contained in the United Nations Rules for Minimum Standards for the Treatment of Prisoners of 1957 and in the International Covenant on Civil and Political Rights. Civil and political rights of man and citizen "since 1966. Also included in this set of documents is the 1979 United Nations Code of Conduct for Law Enforcement Officials and the Principles of Medical Ethics relevant to the role of medical staff, especially physicians, in the protection of prisoners and detainees from torture and other ill-treatment, inhuman or degrading treatment or punishment "from 1982. All this points to the harsh reality that our country does not respect such provisions, and the police officers themselves resort to physical harassment by using force, beatings, with various threats, insults and harassment that satisfy the level of a





humiliating act. Torture can have many definitions, and one of them that is actually considered the most accepted is the following: An act that intentionally inflicts serious pain or suffering, whether physical or mental, on a person in order to obtain information or recognition from him or a third party, punishing a person for an act which he or she has committed or is suspected of having committed, or intimidation or coercion of that person or a third party, or for a reason based on discrimination on any ground, where such pain or suffering is applied by or at the request of or with the knowledge or tacit consent of an official or other person acting in the capacity of an authorized official. It does not cover only pain or suffering arising from, inherent in or associated with legal sanctions. Consequently, the torture is serious violation of fundamental human rights, especially when such acts are committed by persons from whom the necessary protection and security should be obtained. Detainees and convicts are often the most vulnerable group to these acts, primarily because they are deprived of their liberty and feel subordinate. Prisoners are out of sight of the rest of society, so they are a group for which the general public has very little understanding and compassion.²⁴⁴

In general, in the Republic of Northern Macedonia, police brutality and torture are a realistic picture and practice not only in relation to the Roma, but also in relation to all prisoners, regardless of their ethnicity.

Finally, in this chapter, I will suggest that we act faster for the Roma to be involved in every sphere and especially in education, given that many of them do not even have primary education, because with that they will be able to recognize discrimination and to report it to the competent authorities and to protect themselves, but also for the state to respond to such reports accordingly.

3.3. LGBT and transgender people in prisons

The LGBT community and transgender people are still discriminated against in the society in the Republic of Northern Macedonia and unfortunately they are still not accepted as normal individuals. The LGBT community in the Republic of Northern Macedonia acts as a socially unacceptable phenomenon and people part of the LGBT community are rejected in many spheres of life and discriminated against, even by their own families.

²⁴⁴https://msp.mk/wp-content/uploads/2020/01/brosura_so_cip.pdf





This fact immediately indicates that they will be treated even worse in prisons where there is no way to protect themselves from police officers and other prisoners.

When we stated the minimum standards in prisons in point 3.2., The Division by categories was also mentioned, which obliges to separate men from women and juveniles, but does not mention LGBT people, and apart from police officers, they also suffer from by other prisoners who are physically, mentally and sexually abusive towards them.

Here I want to give a positive example of prisons that have divided the male part, the female part of the prison but also a special part for people who are part of the LGBT community. I think it has a positive effect on them being at least slightly protected from other prisoners.

As the basic human rights and freedoms apply to every human being, they should also apply to them and be maximally protected, because they are the most common target of persons whose fundamental freedoms and rights have been violated even when they are persons who have not committed crimes and who are not deprived of liberty.

In our country, we have an association of the LGBT community as well as safe houses, which advocate for equal treatment and offer accommodation, but in prison can not provide adequate protection.

Although it is not sufficiently regulated by written laws and norms, at the international level we still have several norms and principles that protect people from the LGBT community, such as The Yogyakarta Principles, which guarantee the rights of the LGBT community and give recommendations that states should take over.

In 2006 a distinguished group of international human rights experts met in Yogyakarta, Indonesia to outline a set of international principles relating to sexual orientation and identity. These were called the Yogyakarta Principles and have been frequently referred to as an authoritative statement of the principles of international human rights relating to these fields. In November 2017 the principles were updated by the adoption of Additional Principles and State Obligations on the Application of international human rights law in relation to sexual orientation, gender identity, gender expression and sex characteristics to complement the Yogyakarta Principles. The Yogyakarta Principles have been referred to in national and international courts, as guidance on how to apply international human rights standards to LGBT persons.²⁴⁵

²⁴⁵<https://tgeu.org/yogyakarta-principles/>





Some of their principles are:

THE RIGHT TO FREEDOM FROM ARBITRARY DEPRIVATION OF LIBERTY No one shall be subjected to arbitrary arrest or detention. Arrest or detention on the basis of sexual orientation or gender identity, whether pursuant to a court order or otherwise, is arbitrary. All persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention, whether or not charged with any offence.

States shall: Take all necessary legislative, administrative and other measures to ensure that sexual orientation or gender identity may under no circumstances be the basis for arrest or detention, including the elimination of vaguely worded criminal law provisions that invite discriminatory application or otherwise provide scope for arrests based on prejudice; Take all necessary legislative, administrative and other measures to ensure that all persons under arrest, regardless of their sexual orientation or gender identity, are entitled, on the basis of equality, to be informed of the reasons for arrest and the nature of any charges against them, and whether charged or not, to be brought promptly before a judicial officer and to bring court proceedings to determine the lawfulness of detention; Undertake programmes of training and awareness-raising to educate police and other law enforcement personnel regarding the arbitrariness of arrest and detention based on a person's sexual orientation or gender identity; Maintain accurate and up to date records of all arrests and detentions, indicating the date, location and reason for detention, and ensure independent oversight of all places of detention by bodies that are adequately mandated and equipped to identify arrests and detentions that may be motivated by the sexual orientation or gender identity of a person.

THE RIGHT TO A FAIR TRIAL

Everyone is entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law, in the determination of their rights and obligations in a suit at law and of any criminal charge against them, without prejudice or discrimination on the basis of sexual orientation or gender identity.

States shall: Take all necessary legislative, administrative and other measures to prohibit and eliminate prejudicial treatment on the basis of sexual orientation or gender identity at every stage of the judicial process, in civil and criminal proceedings and all other judicial and administrative proceedings which determine rights and obligations, and to ensure that no one's credibility or character as a party, witness, advocate or decision-





maker is impugned by reason of their sexual orientation or gender identity; Take all necessary and reasonable steps to protect persons from criminal prosecutions or civil proceedings that are motivated wholly or in part by prejudice regarding sexual orientation or gender identity; Undertake programmes of training and awareness-raising for judges, court personnel, prosecutors, lawyers and others regarding international human rights standards and principles of equality and non-discrimination, including in relation to sexual orientation and gender identity.

THE RIGHT TO TREATMENT WITH HUMANITY WHILE IN DETENTION

Everyone deprived of liberty shall be treated with humanity and with respect for the inherent dignity of the human person. Sexual orientation and gender identity are integral to each person's dignity.

States shall: Ensure that placement in detention avoids further marginalising persons on the basis of sexual orientation or gender identity or subjecting them to risk of violence, ill-treatment or physical, mental or sexual abuse; Provide adequate access to medical care and counselling appropriate to the needs of those in custody, recognising any particular needs of persons on the basis of their sexual orientation or gender identity, including with regard to reproductive health, access to HIV/AIDS information and therapy and access to hormonal or other therapy as well as to gender-reassignment treatments where desired; Ensure, to the extent possible, that all prisoners participate in decisions regarding the place of detention appropriate to their sexual orientation and gender identity; Put protective measures in place for all prisoners vulnerable to violence or abuse on the basis of their sexual orientation, gender identity or gender expression and ensure, so far as is reasonably practicable, that such protective measures involve no greater restriction of their rights than is experienced by the general prison population; Ensure that conjugal visits, where permitted, are granted on an equal basis to all prisoners and detainees, regardless of the gender of their partner; Provide for the independent monitoring of detention facilities by the State as well as by non-governmental organisations including organisations working in the spheres of sexual orientation and gender identity; Undertake programmes of training and awareness-raising for prison personnel and all other officials in the public and private sector who are engaged in detention facilities, regarding international human rights standards and principles of equality and nondiscrimination, including in relation to sexual orientation and gender identity.

THE RIGHT TO FREEDOM FROM TORTURE AND CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT





Everyone has the right to be free from torture and from cruel, inhuman or degrading treatment or punishment, including for reasons relating to sexual orientation or gender identity.

States shall: Take all necessary legislative, administrative and other measures to prevent and provide protection from torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to the sexual orientation or gender identity of the victim, as well as the incitement of such acts; Take all reasonable steps to identify victims of torture and cruel, inhuman or degrading treatment or punishment, perpetrated for reasons relating to sexual orientation or gender identity, and offer appropriate remedies including redress and reparation and, where appropriate, medical and psychological support; Undertake programmes of training and awareness-raising for police, prison personnel and all other officials in the public and private sector who are in a position to perpetrate or to prevent such acts.²⁴⁶

3.4. Dealing with minors

"Human rights begin with the rights of the child. "A society that respects the human rights of children will become a society that respects human rights for generations." This is a common position of the European Network of Ombudsmen for Children. Minority is the most important period in a person's life because all the things that later characterize a person are acquired in that period, and on the other hand, all the traumas that children suffer in that period affect a huge extent in their future development. Minority or the period in which a person is a child is a period in which the same person prepares for independence and for the continuation of life as an adult and mature person, so I think that everything that happens to a child in the period of his maturity plays a huge role in the further development of his personality. On the first hand, carefree childhood further results in sane people who are positive for society, and on the other hand, a disturbed childhood can greatly mean the wrong development of the person which in the future may be harmful to society.

Children as the most vulnerable category in society, we should first protect them and do everything in our power to prevent them from coming into conflict with the law at

²⁴⁶<https://www.refworld.org/pdfid/48244e602.pdf>





all, but when that has already happened, we have to make sure it is fair, most caring, resocializing and then one day they will again be a sane person, positive for society.

The Law on Justice for Children regulates the treatment of children at risk and children perpetrators of acts that are provided by law as crimes and misdemeanors, determines the conditions for the application of measures of assistance, care and protection, educational and alternative measures and punishment of children and juveniles, the position, role and competence of the bodies participating in the treatment of children and the execution of educational and alternative measures and punishments. This law regulates the measures for protection of the children victims of actions, which are provided by law as criminal acts of the child witnesses and the measures for prevention of juvenile delinquency.

The Law on Justice for Children also provides for several types of sanctions. And that, to a child from 14 to 16 years of age for an action that is provided by law as a crime can be imposed only educational measures. A child from 16 to 18 years of age may be sentenced to educational measures for an action that is provided by law as a criminal offense, and as an exception, a penalty or alternative measure may be imposed. A child from 16 to 18 years of age can be released from punishment under the general conditions set by the Criminal Code. A child for an action that is provided by law as a misdemeanor may be imposed misdemeanor sanctions determined by this law.²⁴⁷

The child is imposed security measures under the conditions determined by the Criminal Code and this law. Confiscation of property and property gain and objects obtained by actions provided by law as criminal offenses and misdemeanors of children is carried out in accordance with the general conditions set out in the Criminal Code. The purpose of educational measures, punishments, alternative measures and misdemeanor sanctions is to provide their education by providing protection and assistance to children by supervising them, by their professional training and by developing their personal responsibility, re-education and proper development. The sanction imposed on the child should correspond to his personality, the gravity of the action provided by law as a crime or misdemeanor and its consequences, the need for his upbringing, re-education, education and development, in order to ensure and protect the most necessary interest for the child. When the legal conditions are met, the competent court imposes a punishment only if the imposition of an educational or alternative measure is not justified. A sentence consisting of deprivation of liberty may be imposed by the competent court only when the purpose of the educational measures, punishment or alternative measures cannot be achieved by

²⁴⁷<https://www.pravdiko.mk/wp-content/uploads/2014/10/Zakon-za-pravda-za-detsata-29-10-2013.pdf>





measures of assistance and protection. If a more severe sanction or a sanction consisting of deprivation of liberty has been imposed, the competent court shall specifically explain the reasons for its imposition. This law also predicts educational measures, namely, a child over 14 years of age for an action that is provided by law as a crime may be imposed the following educational measures: - reprimand or referral to a center for children, - under enhanced supervision by to the parents or guardians, foster family or by the center and - institutional measures referral to an educational institution or to a correctional facility.

Measures of reprimand or referral to a child center are imposed on a child when there is no need for more permanent measures of upbringing, and especially if he has committed an act which is provided by law as a crime of recklessness. Intensified supervision measures are imposed on a child when there is a need for more permanent measures of upbringing, re-education or treatment with appropriate supervision, and it is not necessary to completely separate him from the previous environment. Institutional measures are imposed on a child when there is a need for more permanent measures of upbringing, re-education or treatment and his complete separation from the previous environment. The duration of these measures can not be longer than five years, but up to a maximum of 23 years. When choosing the educational measure, the court will take into account the age of the child, the level of his mental development, his mental qualities, inclinations, motives from which he performed the action, upbringing, environment and circumstances in which he lived, the severity of the action, whether he has previously been sentenced to an educational measure or imprisonment for children and all other circumstances that affect the determination of the type of measure for achieving its goal determined by law. A reprimand is pronounced if it is enough and only reprimand the child for the act committed. When reprimanding the child, the harmfulness of his action will be pointed out and he will be warned that in case of its repetition, another sanction may be imposed on him. Referral to a child center The court will impose the measure referral to a child center when it is necessary to take appropriate short-term measures to influence the personality and behavior of the child.

The Law on Justice for Children also provides penalties for children who have committed crimes. A child criminally responsible over the age of 16 can be punished only if due to the severe consequences of the committed act and the high level of criminal responsibility, it would not be justified to impose an educational measure. Under the conditions determined by this law, a child over 16 years of age may be sentenced to the following punishments: - imprisonment for children, - fine, - prohibition to drive a motor vehicle of a certain type or category - expulsion of a foreigner from the country. Prison for children can only be imposed as the main punishment. Child imprisonment may be imposed on a child criminally responsible over the age of 16 who has committed an act





provided by law as a criminal offense punishable by imprisonment of five years or more severe, if the offense was committed under particularly aggravating circumstances and degree of criminal responsibility of the perpetrator and it would not be justified to impose an educational measure. The prison for children can not be shorter than one or longer than ten years, and are pronounced at full years or at half year. When sentencing, the court may not impose imprisonment for children for a period longer than the sentence prescribed for that offense, but the court is not bound by the minimum prescribed measure of that sentence. When sentencing a child to prison, the court will take into account all the circumstances that affect the sentence to be higher or lower, prescribed in the Criminal Code, paying special attention to the level of mental development of the child and the time needed for his upbringing, re-education and professional training. A child serving a child sentence may be released on parole if he or she has served at least one-third, but not before serving one year of the sentence if the re-education is successful. If the child has been sentenced to imprisonment for children up to two years and six months, he / she can be released on parole for one third of the sentence. During the conditional release, the court determines a measure of intensified supervision by the

Center for Social Work for a certain duration, which may be shorter than the part of the unserved sentence. The court may extend the duration of the intensified supervision up to one year after the duration of the sentence, but at most until the convict turns 21 years old. The court will revoke the conditional release if the convicted child does not fulfill the obligations provided by the intensified supervision or if he is on conditional release.²⁴⁸

Finally, I will pay special attention to the Secondary Prevention of children at risk according to the national strategy for juvenile delinquency in Republic of Northern Macedonia, which aims at children and juveniles who are at risk to commit a crime or children who have committed a crime but are not criminal responsible. Namely, it is about early identification of children at risk or prediction of potential children and families at risk. Secondary prevention seeks to diagnose and treat "unacceptable behavior" before it escalates, or develops into more severe or serious forms of delinquency. The goal is to prevent these children from continuing on that path. Very often these children are known to the police and the Centers for Social Work and often these children come from marginalized communities or other socially excluded groups or members of ethnic

²⁴⁸ <https://www.pravdiko.mk/wp-content/uploads/2014/10/Zakon-za-pravda-za-detsata-29-10-2013.pdf>
<https://www.pravdiko.mk/wp-content/uploads/2013/11/Krivichen-zakonik-integralen-prechisten-tekst.pdf>
<https://www.mtsp.gov.mk/content/pdf/pravilnicidetska/2020/29.6-%D0%94%D0%97.pdf>
https://www.mtsp.gov.mk/wbstorage/files/zakon_osemjestvo_osnoven.pdf





communities. At the level of secondary prevention, the following challenges have been identified:

- The need to develop programs and policies for crime prevention that will be adapted to the needs of children and juveniles from different groups, especially the Roma community and gender sensitive programs that would emphasize the needs of girls;
- Need to develop programs in schools, followed by appropriate policies to determine the needs of children at risk and their identification;
- Identification of families and children at risk; - Development of methods for field identification of marginalized and especially at risk children and juveniles who are not included in the social protection system;
- Need to deepen the knowledge and skills of professionals in all institutions that are in contact with children, who should play a leading role in identifying children at risk and appropriate treatment or referral to appropriate institutions.
- Insufficient number of employees in the Social Work Center and the institutions for social protection, which due to such lack do not perform timely and efficient preventive function.
- Lack of resources for active field work, home visits, appropriate and timely counseling, family support, etc .;
- Develop a framework for the evaluation of existing prevention programs, such as workshops with parents implemented by the Social Work Center and declarative social protection institutions, in order to assess their effectiveness;
- Need to strengthen the training of staff, new recruits and existing staff in institutions;
- Absence of a detailed strategic plan and programs for prevention of juvenile delinquency within the police department for prevention;
- Absence of specialized services and programs for children at risk, development of the institute of foster families (specialized for children in contact or conflict with the law), as well as absence of health programs and programs for treatment of minors who use drugs and other substances.

The strategy provides strategic directions for: education; health, social work centers; the police; local community.





I will also mention the Convention on the Rights of the Child, which is considered the Constitution of the Rights of the Child, because it covers all possible situations in which a child may find himself, which I would like to quote Article 37 - (a) No child not to be exposed to torture or cruel, inhuman or degrading treatment or punishment. The death penalty and life imprisonment without the possibility of release cannot be imposed for crimes committed by persons under the age of eighteen. (b) No child may be deprived of his liberty unlawfully or arbitrarily. The arrest, detention or imprisonment of a child must be in accordance with the law and used only as a last resort and for the shortest possible time. (c) To treat a child deprived of his or her liberty with respect for the dignity of the human person and for taking into account the needs of a person of his or her age. Every child deprived of liberty shall be separated from adults unless it is considered to be in the best interests of the child and shall have the right to maintain contact with his or her family through letters and visits, except in exceptional cases. (d) Every child deprived of his or her liberty shall have the right to urgent legal and other appropriate assistance, the right to a court or other competent independent and impartial body to raise the question of the lawfulness of his or her deprivation of liberty and the right to an urgent decision.²⁵⁰

3.5. Working with persons with disabilities in prisons

The term persons with disabilities is interpreted differently by different authors, depending on whether it is defined medically, pedagogically-psychologically or socially. This term implies such disability in physical or psychological terms, which prevents the normal psycho-physical development of persons leaving social, psychological, pedagogical and other consequences. Disability is fundamentally different from disease. While in the disease, the condition of the organism is dynamic (it has a developmental course), in the disability the condition is static. Therefore, the consequences of an illness, a surviving injury, or a congenital defect remain permanent. The term special needs can

²⁴⁹https://drive.google.com/file/d/1eBlqp1VVm3OVjK_7fSC3man9BLMH38X9/view
<http://dspdp.com.mk/dokumenti/operativen-plan-za-sproveduvanje-na-nacionalnata-strategija-za-pdp-2015-2017g/>
<https://rm.coe.int/16806ee54e>

²⁵⁰<https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>





mean many different conditions: from minor learning difficulties, severe intellectual difficulties, psychiatric disorders, chronic diseases, etc.²⁵¹

Like everyone else, people with disabilities deserve fair and equal treatment when initiating proceedings and serving a prison sentence. These persons are additionally protected as a special category, which also adopted the Convention on the Rights of Persons with Disabilities, which guarantees them their rights and freedoms in every sphere and situation in which they could find themselves. And some of them we will show below, ie. the most important ones on this topic.

Article 12 Equal recognition before the law:

Participating countries affirm that people with disabilities have the right to recognition everywhere, as do people before the law. 2. States Parties recognize that persons with disabilities enjoy legal rights on an equal basis with others in all aspects of life. 3. States Parties shall take appropriate measures to ensure that persons with disabilities have access to the assistance they may need in exercising their legal rights. 4. The participating States shall ensure the prevention of abuse in accordance with international humanitarian law, with all measures relating to the exercise of legal rights providing for appropriate and effective safeguards. These safeguards ensure that the measures relating to the exercise of the lawful observance of the rights, will and privileges of the person are free from conflict of interest and influence and are proportionate and adapted to the situation of the person, to be applied as soon as possible. and are subject to regular scrutiny by a competent, independent and impartial body or tribunal. Safeguards are proportionate to the extent to which these measures affect the rights and interests of the person. 5. Subject to the provisions of this Article, States Parties shall take all appropriate and effective measures to ensure the equal right of persons with disabilities to own or inherit property, to control their own financial affairs and to have equal access to bank loans and other forms of financial lending and ensure that persons with disabilities are not subjectively deprived of their property.

Article 13 Access to justice

States Parties shall ensure effective access to justice for persons with disabilities on an equal basis with others, including through the provision on procedural and age-appropriate adjustments, in order to simplify their effective role as direct and indirect participants, including as witnesses in all legal proceedings. , from the investigation phase

²⁵¹<http://iph.mk/wp-content/uploads/2014/09/Upatstvo-B5.pdf>





itself and another preliminary phase. 2. In order to help ensure effective access to justice for persons with disabilities, States Parties shall promote appropriate training for staff in the field of justice, including police and prison staff.

Article 14 Freedom and security of the person

States Parties shall ensure that persons with disabilities on an equal basis with others: a. enjoy the right to liberty and security of person; b. and that they are not unlawfully and subjectively deprived of their liberties and that any deprivation of liberty is in accordance with the law and that the existence of a disability in any case does not justify deprivation of liberty. 2. States Parties shall ensure that, if persons with disabilities are deprived of their liberty through proceedings, they are entitled, on an equal basis with others, to the guarantees of international human rights and to be treated in accordance with the purposes and principles of this Convention, including providing reasonable adjustment.

Article 15 Exemption from torture or cruel, inhuman or degrading treatment or punishment

No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected to medical or scientific examination without his or her free consent. 2. States Parties shall take effective legal, judicial or other measures to prevent persons with disabilities, on an equal basis, from being subjected to torture or to cruel, inhuman or degrading treatment or punishment.

Article 16 - Liberation from exploitation, violence and abuse

States Parties shall take appropriate legal, administrative, social and other measures to protect persons with disabilities, inside and outside the home, from all forms of exploitation, violence and abuse, including on the grounds of sex. 2. States Parties shall also take all appropriate measures to prevent all forms of exploitation, violence and abuse, including, inter alia, the provision of appropriate forms of assistance and support to the sex and age sensitivity of persons with disabilities, their families and guardians, involved in providing information and education on how to avoid, recognize and report cases of exploitation, violence and abuse. States Parties shall ensure that protection services are sensitive to age, sex and disability. 3. In order to prevent the occurrence of all forms of exploitation, violence and abuse, States Parties shall ensure that all facilities and programs modeled on the needs of persons with disabilities are effectively monitored by independent authorities. 4. States Parties shall take appropriate measures to promote the physical, cognitive and psychological resuscitation, rehabilitation and social reintegration of persons with disabilities who have been victims of all forms of exploitation, violence and abuse,





including through the provision of protective services. This resuscitation and reintegration takes place in an environment for improving the health, well-being, self-esteem, dignity and independence of the person and taking into account the specific genders and age needs.

5. States Parties shall implement effective legislation and policies, including legislation and policies aimed at women and children, to ensure that cases of exploitation, violence and abuse of persons with disabilities are identified, investigated and, if necessary, proceedings are initiated.

Article 17 - Protection of the integrity of the person

Everyone with a disability has the right to respect for his or her physical and mental integrity on an equal basis with others.²⁵² In addition to the legal written norms, conventions and recommendations, a Manual for communication with persons with disabilities has been developed.

Some general tips:

- When meeting a person with a disability, it is appropriate to shake hands. People with limited hand function or those with artificial limbs can usually be handled. Left-handed handshake is also an acceptable greeting;
- If you offer help, wait until the offer is accepted. Then listen to or ask for instructions from the person with the disability;
- Do not be afraid to ask questions when you are not sure what to do;
- Speak intelligibly, at a normal pace and speed, use clear and concise speech;
- Treat adults with disabilities as adults. It is offensive if you address them with a tone of voice or language style that is appropriate for young children;
- Relax. Do not be ashamed to use common expressions, such as "See you later" (if you talk to a visually impaired person) or "Have you heard of it?" (If you are communicating with a hearing impaired person);
- Address people with disabilities by name only when you are closer;

²⁵²<https://www.ohchr.org/EN/HRBodies/CRPD/Pages/ConventionRightsPersonsWithDisabilities.aspx#12>





- Talk directly to the person with the disability, rather than his / her companion.²⁵³

3.6. Women deprived of their liberty

In the past, women have been discriminated against on the grounds that they are women, which means discrimination on the basis of sex. They were deprived of all the things that men did, such as the right to vote, the right to free expression, and so on. But the very fact that they were oppressed and considered less than men, led to a fight for their rights, so in 1910 in Copenhagen was held the First International Conference of Women and it was decided to celebrate International Day of the woman, but without setting an exact date. The fight for women's suffrage, the fight against the threat of war, the fight for the care of mothers and children and the fight against rising prices were some of the demands highlighted at this Conference.

The idea of celebrating a special day dedicated to women, according to the Helsinki Committee for Human Rights, appeared at the beginning of the 20th century, and was especially insisted on by the socialist movement. But of all them, the greatest credit goes to Rosa Luxemburg and Clara Zetkin.

The first Women's Day was celebrated on February 28, 1909 in the United States, at the initiative of the Socialist Party of America. Earlier, in 1908, 15,000 women marched through the streets of New York under the motto "Bread and Roses" demanding the right to vote, part-time work and better pay. Bread was a symbol of economic security, and roses were a symbol of a better life.

The following year, March 19, 1911, the holiday was first celebrated by more than a million people in Austria, Denmark, Germany, and Switzerland. On March 8, 1913, women across Europe held peace rallies. In Russia, at the initiative of Alexandra Kolontay, March 8 is declared a national holiday for the first time.

In 1977, the UN General Assembly adopted a proposal declaring March 8 the International Day of Women's Rights and International Peace.

²⁵³ <https://www.unicef.org/northmacedonia/media/6951/file/%D0%9F%D1%80%D0%B8%D1%80%D0%B0%D1%87%D0%BD%D0%B8%D0%BA%20%D0%B7%D0%B0%20%D1%81%D0%BB%D1%83%D0%B6%D0%B1%D0%B5%D0%BD%D0%B8%D1%86%D0%B8%20%D0%9C%D0%90%D0%9A%D0%95%D0%94%D0%9E%D0%9D%D0%A1%D0%9A%D0%98.pdf>





One of the most important documents concerning women's rights is the Convention on the Elimination of All Forms of Discrimination against Women, adopted by the United Nations General Assembly in 1979. This Convention is also known as the "Women's Law".²⁵⁴

Under Article 1 of the United Nations Convention on the Elimination of All Forms of Discrimination against Women, discrimination against women means any discrimination, exclusion or restriction on the basis of sex which has the effect or purpose of jeopardizing or preventing the recognition, achievement or perpetration of of women on human rights and fundamental freedoms in the political, economic, social, cultural and civil or other spheres, regardless of their marital status, on the basis of equality between men and women. In doing so, in accordance with Article 2 of the Convention, States Condemn discrimination against women of all kinds, agree to implement, with all appropriate means at their disposal and without delay, the policy of eliminating discrimination against women, and to that end undertake, inter alia, to introduce the principle of equality of men and women in their national constitutions or in the relevant laws if they have not already done so, as well as to ensure, by legal or other appropriate measures, the practical application of this principle; adopt appropriate legal and other measures including sanctions prohibiting all forms of discrimination against women; to introduce legal protection of women's rights on an equal footing with men and through the competent national courts and other public institutions to ensure effective protection of women from any discriminatory procedure.²⁵⁵

With regard to women deprived of their liberty, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment has the largest share.

The European Committee against torture has established criteria governing its operation in various places of detention, including police stations, prisons, places where immigrants are detained, psychiatric facilities and correctional facilities for juveniles. Of course, the Committee applies the above criteria to women and men deprived of their liberty. However, in all Council of Europe member states, women prisoners represent a

²⁵⁴ <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>
https://en.wikipedia.org/wiki/Convention_on_the_Elimination_of_All_Forms_of_Discrimination_Against_Women#:~:text=The%20Convention%20on%20the%20Elimination,been%20ratified%20by%20189%20states
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https://en.wikipedia.org/wiki/International_Women%27s_Day
²⁵⁵ <https://www.ohchr.org/en/professionalinterest/pages/cedaw.aspx>





relatively small number of persons deprived of their liberty. It can be too expensive for states to provide a separate place for women prisoners, so they are often kept in small locations (sometimes away from their homes and children dependent on them), in rooms that were primarily intended for male prisoners (and maybe share them with them). Under those circumstances, special care is needed to ensure that women deprived of their liberty are kept in a safe and decent prison environment.

So, the recommendations are these:

- **Mixed gender staffing**

As the Committee stressed in its 9th General Report, mixed gender staffing is an important safeguard against ill-treatment in places of detention. The presence of male and female staff can have a beneficial effect in terms of both the custodial ethos and in fostering a degree of normality in a place of detention. Mixed gender staffing also allows for appropriate staff deployment when carrying out gender sensitive tasks, such as searches. In this context, the Committee wishes again to emphasise that persons deprived of their liberty should only be searched by staff of the same gender and that any search which requires an inmate to undress should be conducted out of the sight of custodial staff of the opposite gender.

- **Separate accommodation for women deprived of their liberty**

The duty of care which is owed by a State to persons deprived of their liberty includes the duty to protect them from others who may wish to cause them harm. The Committee has occasionally encountered allegations of woman upon woman abuse. However, allegations of ill-treatment of women in custody by men (and, more particularly, of sexual harassment, including verbal abuse with sexual connotations) arise more frequently, in particular when a State fails to provide separate accommodation for women deprived of their liberty with a preponderance of female staff supervising such accommodation. As a matter of principle, women deprived of their liberty should be held in accommodation which is physically separate from that occupied by any men being held at the same establishment. That said, some States have begun to make arrangements for couples (both of whom are deprived of their liberty) to be accommodated together, and/or for some degree of mixed gender association in prisons. The Committee welcomes such progressive arrangements, provided that the prisoners involved agree to participate, and are carefully selected and adequately supervised.

- **Equality of access to activities**

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, Committee 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 Committee, 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.

- Ante natal and post natal care

Every effort should be made to meet the specific dietary needs of pregnant women prisoners, who should be offered a high protein diet, rich in fresh fruit and vegetables. It is axiomatic that babies should not be born in prison, and the usual practice in Council of Europe member States seems to be, at an appropriate moment, to transfer pregnant women prisoners to outside hospitals. Nevertheless, from time to time, the Committee encounters examples of pregnant women being shackled or otherwise restrained to beds or other items of furniture during gynaecological examinations and/or delivery. Such an approach is completely unacceptable, and could certainly be qualified as inhuman and degrading treatment. Other means of meeting security needs can and should be found. Many women in prison are primary carers for children or others, whose welfare may be adversely affected by their imprisonment. One particularly problematic issue in this context is whether - and, if so, for how long - it should be possible for babies and young children to remain in prison with their mothers. This is a difficult question to answer given that, on the one hand, prisons clearly do not provide an appropriate environment for babies and young children while, on the other hand, the forcible separation of mothers and infants is highly undesirable. In the view of the Committee, the governing principle in all cases must be the welfare of the child. This implies in particular that any ante and post natal care provided in custody should be equivalent to that available in the outside community. When babies and young children are held in custodial settings, their treatment should be supervised by specialists in social work and child development. The goal should be to produce a child-centred environment, free from the visible trappings of incarceration, such as uniforms and jangling keys. Arrangements should also be made to ensure that the movement and cognitive skills of babies held in prison develop normally. In particular, they should have adequate play and exercise facilities within the prison and, wherever possible, the opportunity to leave the establishment and experience ordinary life outside its walls. Facilitating child-minding by family members outside the establishment can also help to ensure that the burden of child-rearing is shared (for example, by the child's father). Where this is not possible, consideration should be given to providing access to creche-type facilities. Such arrangements can enable women prisoners to participate in work and other activities inside the prison to a greater extent than might otherwise be possible.





- Hygiene and health issues

The Committee also wishes to call attention to a number of hygiene and health issues in respect of which the needs of women deprived of their liberty differ significantly from those of men. The specific hygiene needs of women should be addressed in an adequate manner. Ready access to sanitary and washing facilities, safe disposal arrangements for blood-stained articles, as well as provision of hygiene items, such as sanitary towels and tampons, are of particular importance. The failure to provide such basic necessities can amount, in itself, to degrading treatment. It is also essential that the health care provided to persons deprived of their liberty be of a standard equivalent to that enjoyed by patients in the outside community. Insofar as women deprived of their liberty are concerned, ensuring that this principle of equivalence of care is respected will require that health care is provided by medical practitioners and nurses who have specific training in women's health issues, including in gynaecology. Moreover, to the extent that preventive health care measures of particular relevance to women, such as screening for breast and cervical cancer, are available in the outside community, they should also be offered to women deprived of their liberty. Equivalence of care also requires that a woman's right to bodily integrity should be respected in places of detention as in the outside community.

Thus, where the so-called "morning after" pill and/or other forms of abortion at later stages of a pregnancy are available to women who are free, they should be available under the same conditions to women deprived of their liberty. As a matter of principle, prisoners who have begun a course of treatment before being incarcerated should be able to continue it once detained. In this context, efforts should be made to ensure that adequate supplies of specialist medication required by women are available in places of detention. As regards, more particularly, the contraceptive pill, it should be recalled that this medication may be prescribed for medical reasons other than preventing conception (e.g. to alleviate painful menstruation). The fact that a woman's incarceration may - in itself - greatly diminish the likelihood of conception while detained is not a sufficient reason to withhold such medication.²⁵⁶

²⁵⁶<https://rm.coe.int/16806cd377>





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CHAPTER IV

4. WORKING WITH OTHER VULNERABLE AND MARGINALIZED GROUPS IN PRISONS

Author: Angel Ristov

4.1. Narcotics users

Drug trafficking and addiction of drugs is a global evil in modern societies. Therefore, drug use and illegal activities should be analyzed not only in a national, but also in a global context. Organized crime of drug trafficking is estimated to cost European Union citizens more than 24 billion euros a year. The most common drug in Europe is cannabis. It is estimated that it accounts for 38% of retail sales, bringing in more than 9.3 billion euros a year. According to a report, around 22 million Europeans use cannabis.²⁵⁷ In second place is heroin, which earns 6.8 billion euros a year. Heroin is the cause of death of many users. Opium is mainly produced in Afghanistan, and the Balkan route remains the main corridor for heroin to enter the EU, although new routes are emerging from Africa, the South Caucasus, Syria and Iraq. Cocaine is in third place, and the retail market carries about 5.7 billion euros. Colombian and Italian criminal groups are the main distributors in Europe.

Drugs are a serious threat to the health, safety and security of people, especially the young population. But it is also a serious threat to the future, well-being and prosperity of the population and society. The response to this serious threat in all modern societies is expressed through measures of prevention, treatment, harm reduction, social reintegration, control and law enforcement.²⁵⁸ Despite all efforts to prevent this evil of humanity, drugs still find their way to its users with a tendency to increase their number. Drug use and addiction are closely related to global social problems such as poverty, delinquency, crime, homelessness and others. It affects all social segments of life, so the main goal of the United Nations and the European Union and national state is to reduce the supply and

²⁵⁷Joint report by Europol, the European Police Agency and the European Monitoring Center for Drugs and Drug Addiction (EMCDDA).

²⁵⁸ See M. Kanevchev, *The Special Part of the Criminal Law*, Skopje, 2014, p.264





demand of drugs, and thus preserve the fundamental values of society, family, the individual. These are the goals of the anti-drug strategy of the Republic of N. Macedonia in order to reduce supply and demand, which includes measures for prevention of addiction, suppression of crime related to drug abuse,²⁵⁹ measures taken for treatment, rehabilitation and resocialization of drug addicts.²⁶⁰

Due to its geographical position R.N. Macedonia is a transit country through which the main routes for drug trafficking pass. Some of these quantities end up in Macedonia, while most of them end up in European countries. Cannabis and synthetic drugs are illegally produced for the needs of the local market in Macedonia. To determine the current situation with drug abuse in the Republic of N. Macedonia lacks more recent research to see if there are significant changes before and after the adoption of the National Drug Strategy. Significant research was conducted in the period May - November 2012, in cooperation with the Ministry of Health and the Ministry of Interior. The results of the research show that the age group 20-34 years is the most represented in terms of drug use. In that age category the drug is most abused.

Prejudices and stereotypes are deeply ingrained in everyday life.²⁶¹ Most people who use drugs (90%) think that they do not enjoy equal treatment, while small number think that they partially enjoy equal treatment with other citizens. Only one person who uses drugs thinks they are treated equally. These data correspond to the high percentage of

²⁵⁹ See more T. Vitlarov, *Criminal Law*, Special section with practical examples, authorized lectures, 2013, p.56.

²⁶⁰ With the Drug Strategy of the Republic of Macedonia 2014-2020, correlations will be made with the drug policies adopted by the EU and the member states. Namely, the commitments of the Drug Strategy of the Republic of Macedonia 2014-2020 are based on the basic principles: balanced approach between reducing demand and reducing drug supply, by strengthening the core values of the European Union: respect for human dignity, freedom, democracy, equality, solidarity, the rule of law and human rights. The objectives of each EU Member State's strategies and action plans are to ensure and strengthen the well-being of society and the individual, to protect public health and to ensure a high degree of security. The Republic of N.Macedonia incorporates these approaches, principles and goals in its drug policy even before the accession to the EU and works on their further development and improvement. In that direction, the Drug Strategy of the Republic of N.Macedonia develops the two central concepts, which are complementary to each other. See more National Drug Strategy for 2016-2020.

²⁶¹ Discrimination is unequal treatment of people based on certain personal traits or characteristics, discriminatory grounds, which includes unfounded classifications and differentiations in a given legal context. Discrimination has several forms and it appears as direct and indirect discrimination.





experience with discrimination, for which 93.3% of the respondents answered that they were discriminated.²⁶²

The analysis showed that there is a much higher number of men who abuse drugs than women, 84% of men, compared to 16% of women, of all respondents included in the study. Information from focus group discussions indicated that parks were the most common location for drug users. The most common forms of drug use are injecting and smoking heroin "on foil". Very often during techno parties, synthetic drugs and tablets of legally permitted drugs containing controlled substances, usually tramadol and diazepam, are used in combination with alcohol. The drugs are procured from dealers. During the weekends there is a significant violation of public order and peace under the influence of drugs. Cannabis is the most widely used, followed by heroin and synthetic drugs.

It is a common case of methadone abuse that is procured from pharmacies, but also from addiction treatment centers (sale of the received weekly methadone therapy on the "black market"). The three focus groups highlighted the need to train police officers, especially on newly designed drugs. No drug use research has been conducted in prisons so far. The only information on drug use in prisons is certain media stories as well as the annual reports of the Ombudsman of RSM.

With the amendments to the Law on Control of Narcotic Drugs and Psychotropic Substances in 2016, the conditions for growing cannabis for medical purposes were regulated by legal entities that after fulfilling the conditions in terms of space, equipment and staff, evaluated by a Commission established by Minister of Health, receive approval for the cultivation of cannabis for medical purposes, with the prior consent of the Government of the Republic of Northern Macedonia. The legal entity, grower of cannabis for medical purposes, processes the dry mass of the plant exclusively in the Republic of N. Macedonia by a legal entity that has a license for the production of cannabis extracts.

Cultivated cannabis for medical purposes in the Republic of N. Macedonia can be processed exclusively by legal entities that have a license for the production of cannabis extracts. The adoption of this law enabled the export of dried flowers obtained by growing cannabis for medical purposes on the markets in Europe and beyond. So far in the Republic of N. Macedonia, approval for cultivation of cannabis for medical purposes after

²⁶²Research of experiences and knowledge for prevention and protection against discrimination of vulnerable groups of citizens, ESE, Skopje, 2019.





previously obtained consent from the Government of the Republic of Northern Macedonia have received twenty-nine companies, with a tendency to increase that number.

The interest for investing in the Republic of N. Macedonia for growing cannabis for medical purposes is due to the favorable business climate, as well as the cheap labor on the labor market. The interest has also increased due to the rapidly rising price on the world stock market of cannabis oil and the dried flower of the cannabis plant. The supervision over the implementation of this law and the regulations based on this law are performed by the Ministry of Health, Ministry of Agriculture, Forestry and Water Economy, Ministry of Interior, Agency for Medicines and Medical Devices, Ministry of Finance - Customs Administration, Agency for control of the cultivation and extraction of cannabis and production of cannabis and cannabis products for medical and scientific purposes and other state institutions.

In recent years, the problem of illicit drug trafficking has become particularly acute with the amendments to the Law on Narcotic Drugs, which allowed the production of cannabis for medical purposes. Very often this cannabis, due to numerous abuses in the supervision and control of the process of growing cannabis for medical purposes ends up on the domestic market. Numerous police actions for seizure of large quantities of cannabis have become more frequent in cooperation with the regional police and DEA.

The problem becomes especially topical and serious with the announcements about the need to legalize the use of cannabis for personal use. The fact of great support from certain non-governmental organizations as well as the position of the Government of RN Macedonia which is announced regarding this issue is astonishing. Will the use of cannabis for personal use in small quantities be allowed and legally regulated, the future will show. However, this issue should be approached very carefully and cautiously because the future of the young generations may be in question. The increased availability of narcotics, especially cannabis in our society is reflected in the prison environment.

There are several reasons for the increasing use of psychotropic substances and narcotics today.²⁶³ One of the most pronounced causes is poverty, financial and economic problems, dysfunctional families, declining family and social values. The use of psychotropic substances and narcotics is often associated with crime and the commission of crimes directly or indirectly related to the use of narcotics.

According to a study, a stereotype of a drug user is a person who in no way contributes to society, a person who is unemployed or incapable of work and who does not

²⁶³ J. Bukelic, Drug Myth or Disease, Institute for Curriculum and Teaching Aids, Belgrade, 1998, p. 43.





pay taxes; a person who is load to the state, because it is necessary to pay the costs of rehabilitation, procurement programs, etc., a person who causes harm through overdose, physical injuries and illnesses, cause fear for others from violence and infectious diseases, blood-borne diseases and infections, etc.²⁶⁴

The drug trade and its use have also been recorded in prison conditions, according to the 2017 Report of the Ombudsman of RN Macedonia. Drugs were readily available in prisons despite heavy control and surveillance. A large number of drug-addicted prisoners are also serving their sentences in prisons, which requires medical treatment.

The example when drug addiction is acquired in prison is not uncommon. For these reasons, the recognition and response of the symptoms and indicators of drug addiction in prisoners is extremely important in the actions of prison officials. These are in order to provide adequate health and psychological assistance to these people. Indicators that can be used to identify drug abuse in prisons can be divided into physical, emotional, personal, work, social and others.

Physical signs of drug abuse are most often: 1) Poor physical (ascetic) appearance, pallor, swollen (bloated) face; 2) Sudden weight loss or sudden weight gain, decreased appetite; 3) Increased need for sugar and sweets; 4) Frequent health disorders, nausea, vomiting, sweating; 5) Prolonged cough and respiratory infection; 6) Cold and sweaty palms, shaking hands; 7) Fatigue and rapid fatigue and 8) Difficult and slow walking; 9) Redness in the eyes, sensitivity to light and empty eyes; 9) Rash and burns on the body, needle stings, unhygienic and bad personal appearance.

Emotional signs of drug abuse are: 1) Frequent mood swings, hallucinations and crises; 2) Radical mood swings 3) Aggressive behavior, impatience and nervousness; 4) Oblivion, lack of concentration and difficult maintenance of attention; 5) Non motivation and loss of interest in any activities; 6) Psychological changes in the personality, decrease in self-confidence, depression and withdrawal in oneself; 7) Decreased ability to reason and non-negotiable behavior

Personal signs of drug abuse are: 1) Disturbed relationships with family members and other convicts; 2) Non-cooperation and hostility towards family, convicts, lawyers and employees; 3) Lack of interest in free activities in the prison; 4) Aggressive treatment towards prison staff and others and 5) Violation of the rules of conduct.

²⁶⁴ Why wouldn't I discriminate against all of them? –A report on Stigma and Discrimination towards the Injecting Drug User Community, Australian Injecting and Illicit Drug Users League (AIVL), Canberra, Australia, 2011, p. 48





Working signs for drug use are: 1) Loss of interest in work and other activities; 2) Lack of concentration at work; 3) Distrust, negative attitude towards prison staff and 4) Problems with discipline and non-compliance with work responsibilities.

Social signs of drug use are: 1) Quarrels with other convicts, fights, thefts; 2) Suspicious 3) Offensive speech and hateful use of unknown words (slang) lying and dishonest behavior, etc.

Other reasons: 1) Smoking non-stop; 2) Frequent use of eye drops; 3) Possession of utensils necessary for drug use (spoon, tablets, etc.).²⁶⁵

Drug addiction is a difficult disease to cure. It is even more difficult to treat in prison conditions due to the numerous specifics of the prison environment. Therefore, it is rightly pointed out that drug addiction treatment is accompanied by great uncertainty in medical practice.²⁶⁶ Narcotics addicts in prisons are often discriminated against by other inmates, and sometimes by prison staff. This is especially true at times when drug addicts are in crisis. Therefore, when dealing with such persons, officials should pay special attention to cases when they face an abstinence crisis and seek appropriate medical and health care for them. Otherwise, it can be fatal for the health of such convicts.

Abstinence crisis syndrome occurs when the use of a narcotic substance is stopped or re-used after a certain period of time. It is an undoubted indicator, a sign that the person is addicted to narcotics.²⁶⁷ Usually the abstinence crisis lasts from five to ten days. It is expressed by strong changes in metabolism.²⁶⁸ There are various ways to overcome this crisis. In such situations, the need for medical assistance and separation of the addict from the environment in which he lives is mandatory, in order to avoid possible other problems as a result of the crisis.²⁶⁹

²⁶⁵ B.Ilic, *Drugs among your children, (manual for parents)*, Association for Fight against Drug Addiction, (Svilajnac: GEA), Belgrade 2002.

²⁶⁶ C. P. Petrovic, *Drugs and Human Behavior*, Biggs, Belgrade, 1983, p. 247-249.

²⁶⁷ *Ibidem*.

²⁶⁸ *Ibidem*.

²⁶⁹ Abscessive crisis (syndrome) manifests itself in four stages. The first stage is characterized by a desire and desire for drugs, mood swings, mental tension, insomnia and loss of appetite. This phase usually lasts 8 to 12 hours from the last taking of the drug and lasts 12 hours. In the second stage, these syndromes progress and last from 24 to 40 hours after the last drug is taken. Most often the addict at this stage has a fever, seizures and tension. The third phase begins after 40 hours when these symptoms are followed by muscle pain, anxiety and psychomotor agitation. The fourth stage occurs about 72 hours after the last taking of the drug. It is





Prisons lack in-depth research on discrimination on this basis. According to a survey conducted by the non-governmental organization ESE in 2019, 93.3% of respondents who are addicted to drugs said that they faced discrimination on this basis, which indicates that the reason for discrimination is not always the health of people, but their position in society, non-acceptance by society, treatment by the police as if they were criminals, the perception that drug use is a crime etc.²⁷⁰ Only two people answered that they had experience of discrimination based on gender. It is not clear from the data whether in these cases of discrimination there was intersection on several grounds (for example, belonging to a marginalized group, health status, etc.), given that more answers to this question are allowed.

Social and health care is an area in which people who use drugs most often face discrimination (70%). 20% of the respondents answered that they faced discrimination in the field of labor relations and the judiciary and administrative bodies. Other respondents who used drugs stated that they faced discrimination in access to goods and services; education, science and sports, and one respondent with discrimination regarding the right to membership in a political party. The latter fact coincides with the fact that one person was discriminated against on the basis of political conviction.

Several sources confirm that people who use drugs are victims of systemic discrimination, which is confirmed by the data from this analysis, which is actually the biggest obstacle to reporting cases of discrimination, due to fear of victimization and worse treatment after reporting. Namely, 83.3% of the respondents had experience of discrimination by a state body, one person with discrimination by a local self-government unit, while two persons stated that they had experience of discrimination committed by a natural person.

Despite the high percentage of experience of discrimination by people who use drugs, they do not have sufficient knowledge of the available mechanisms for protection against discrimination. Almost all respondents in the interviews (93.3%) answered that in case of discrimination citizens can seek protection from civil society organizations, and some of

characterized by the maximum intensity of all the listed symptoms accompanied by abdominal pain, diarrhea and vomiting. As a result, the addict appears weak and scared with fever in the body.

²⁷⁰Research on protection against discrimination ..., p. 58.





them additionally answered that protection can be sought from the Ombudsman (40%), 13.3 % in the CPD and 6.6% in the court.

4.2. People living with HIV in prisons

Republic of N. Macedonia is one of the countries in the world²⁷¹ that has managed to provide a multispectral approach to the response to HIV / AIDS.²⁷² It is this approach that has ensured that the low prevalence of infection that is localized within the groups at highest risk is maintained. However, this does not mean that the fight against HIV / AIDS is completely won.²⁷³ The continuous efforts in this area, the integrated and harmonized approach contribute to better dealing with it, not allowing a change in the epidemiological peacture in the country.

According to the findings of the 2010 Biological and Behavioral Studies, there is still a significant level of high-risk behavior among injecting drug users, sex workers, same sex relations, and convicts serving prison sentences. The current trend of new HIV infections and high rates of hepatitis C infection among drug users confirms this.

The Republic of N.Macedonia has the lowest level of HIV compared to all other countries in the region. The first HIV positive case was registered in 1987. The first case of a person suffering from AIDS was registered in 1989, and the first death was registered in 1990. In the period 1987-2011, a total of 146 people were registered with HIV / AIDS.

In the period 2005-2011 when in R. N. Macedonia were implemented activities of the Global Fund at the Ministry of Health, a total of 76 people living with HIV / AIDS are registered. This is primarily due to the increased activity of all stakeholders involved in the implementation of the activities against HIV at all levels, as well as the promotion and

²⁷¹ In 2010, 1.8 million people died of HIV / AIDS worldwide, of which 1.3 million lived in sub-Saharan Africa. In the period from 1997 to 2010, the rate of new HIV infections dropped by 21%. Currently, 15 million people worldwide need ARVT treatment. Of these, 10.6 million live in Africa. On average, about 3,200 newly infected people with HIV are treated for ARVT every day worldwide (or a total of 6.6 million people are on ARVT each year), but more than 7,100 daily or (2.6 million annually) and remain infected with the virus without treatment. People living with HIV / AIDS are in the most productive years of their lives (15-49 years). In Eastern Europe and Central Asia the number of people living with HIV has increased by 250% .

²⁷² See *National Strategy for HIV 2012-2016*, p. 2.

²⁷³ *Ibidem*.





availability of HIV testing services and institutions for the general population, especially vulnerable groups and young people.

The case law of the European Court of Human Rights as a stereotype that refers to the health of people predicts HIV infection.²⁷⁴ Thus in the case of *Kytin v. Russia* concludes that "ignorance of how AIDS spreads and creates prejudices that stigmatize and marginalize those infected with HIV ... as a result, HIV-positive people are a vulnerable group with a history of prejudice and stigma." In the case *I.B. v. Greece* the court finds that HIV-positive people have faced a range of problems not only medically but also professionally, socially, personally and psychologically.... deep-rooted prejudices, even among the most educated people.²⁷⁵

In the Republic of Macedonia, there are still misconceptions about the manner of transmission of HIV infection and they are an important factor that contributes to prolonged risky behavior and stigmatization of people living with HIV / AIDS. In the populations of sex workers and people who inject drugs, there is a positive trend in terms of condom use during the last sexual intercourse, while in other groups there is a negative trend in condom use, compared to 2007. Data on condom use during anal intercourse are unsatisfactory, the percentage of use ranges from 30-50% in different population groups. Condom use in people who have sex under the influence of alcohol / drugs ranges from 10-18%, which is a very low percentage and potential risk for HIV and other sexually transmitted infections (STIs).

From the findings of the 2010 Biological and Behavioral Studies, it can be concluded that there is still a significant level of high-risk behavior among injecting drug users, sex workers, homosexual relation, and convicts serving prison sentences. The current trend of new HIV infections and high rates of hepatitis C infection in drug users confirms this.

The associated level of stigma and discrimination among high-risk groups and people living with HIV / AIDS is still high. Data from several studies conducted in these groups confirm the still high level of stigma and discrimination against injecting drug users, sex workers, convicts, homosexuals and people living with HIV.²⁷⁶

²⁷⁴ For more on the case law of the European Court of Human Rights relating to discrimination on the grounds of HIV see *Case Kiytin v. Russia and GN v. Italy*.

²⁷⁵ Z. Poposka, L. Jovevski, *op. cit.*, p. 21.

²⁷⁶ According to the World Health Organization, health is a state of complete physical, mental and social well-being, not just the absence of disease or physical defects. This basis protects people from unequal





Prisons are considered a high-risk environment for HIV transmission. Numerous factors contribute to this condition: injecting drug use, tattooing with non-sterile equipment, unprotected sex, high rape rates as well as substandard conditions and overcrowding. With the improvement of the living conditions in the prisons in 2018, especially in the new part of the Idrizovo Prison which covers as much as 3/5 of the total number of convicts in the state, it is expected to significantly reduce and prevent the number of newly infected HIV convicts.

Currently in Macedonia there are over 210 registered HIV patients, of which 20 were detected in 2012, and 24 in 2013, only 11 in 2014.²⁷⁷ According to the Institute of Public Health, the most common factor in the spread of the infection is the practice of unprotected sex.²⁷⁸

In prison conditions, according to the statements of the convicts, this is a taboo topic, although everyone who has spent a long time in prison has seen or heard of homosexual relationships and sexual violence. Despite this, cases of reporting to prison authorities in prisons are very rare. In court practice so far, no reports of prisoners have been recorded, nor has a procedure been conducted, despite suspicions and rumors of such occurrences in prisons.²⁷⁹

According to research conducted by non-governmental organizations, the most common reason for the spread of HIV in prisons is sexual violence between prisoners, as well as unprotected sex.²⁸⁰ Improving living conditions in prisons and reducing the number of convicts in cells will significantly contribute to preventing the spread of HIV among prisoners.²⁸¹

treatment based on current and past health status. Based on that, discrimination on the basis of health condition refers to both mental and mental health.

²⁷⁷ *National Strategy for HIV ...*, p.10.

²⁷⁸ *Ibidem*.

²⁷⁹ G. Karadzovski, *Epidemiological Report 1987-2010*, Institute of Public Health Skopje, 2010.

²⁸⁰ *National Strategy ...*, p. 11.

²⁸¹ In Eastern Europe, heterosexual contact remains the dominant mode of HIV transmission (48%). People who inject drugs intravenously, which are very common in Russia, account for as much as 43% in the Eastern European region. In Central Europe and the Balkans in the last few years the predominant mode of HIV transmission remains sexual contact between men (MSM) - 29%, followed by the mode of spread of HIV through heterosexual contact - 24%.





In order to increase protection against HIV / AIDS in prison conditions, epidemiologists make general protection recommendations that should be practiced by prison authorities. In this regard, it is recommended:

- improving general hygiene and improving the quality of health care and care for prisoners;
- development and implementation of a program for continuous information of all prisoners on the manner of protection from HIV infection, as well as the danger of other infections transmitted through blood and sex, with special reference to safe behavior;
- continuous education for all prison staff, on the ways of protection in professional exposure to blood and blood derivatives suspected of HIV or other blood-borne infections and on overcoming stigma and discrimination;
- Implementation of a sustainable program for continuous distribution of condoms among persons serving prison sentences;
- Respect for the right of prisoners to voluntary counseling and testing for HIV;
- Respect for the right of prisoners in case of need to be allowed to receive antiretroviral therapy, in accordance with the applicable protocol for persons free;
- Program for treatment of drug users serving prison sentences, with special reference to intravenous drug users.

According to research by the NGO Hera, the problem of violence is a reality in prisons in transition countries, where the internal prison hierarchy is based on a “caste system”, which is supported and even accepted by some prison authorities.²⁸² The existence of such a system inevitably has a detrimental effect on lower-caste prisoners, in extreme cases forcing some of them to accept to be sexual objects and victims of violence. This includes unprotected sex, which can lead to HIV transmission.²⁸³ According to the current situation in Macedonian prisons, no cases of AIDS have been registered. Hera has conducted

²⁸²Needs Assessment of People Living with HIV in the Republic of Macedonia, NGO HERA-Skopje, November 2009.

²⁸³ Apart from discrimination based on health status, very often in practice this basis is closely related to discrimination based on belonging to a marginalized group and sexual orientation. For more on discrimination based on sexual orientation see the case of the European Court of Human Rights *Vallianatos and others v. Greece*, *X and others v. Austria* and *Smith and Grady v. UK*.





voluntary HIV testing and counseling for prisoners. In Macedonia, the number of AIDS patients has increased compared to previous years.

In order to increase HIV protection in prisons, the Strategy envisages a special section on Prevention among convicts serving prison sentences and detainees. The main strategic goal is to maintain the low prevalence of HIV / AIDS among convicts serving prison sentences. The following strategic interventions are envisaged in that direction:

1. Maintenance and expansion of the Services for reduction of harms from intravenous drug use through substitution prevention and treatment of drug abuse in the Idrizovo Penitentiary and the Skopje Prison Penitentiary for convicts.
2. Establishment of services for prevention and treatment of drug abuse for convicted persons serving prison sentences in other penitentiary institutions in the Republic of Macedonia;
3. Holding information and educational sessions on prevention of HIV / AIDS / STIs / drug use for convicted persons serving prison sentences;
4. Holding informative and educational sessions for prevention of HIV / AIDS / STIs / drug use for the officials in the penitentiary-correctional institutions;
5. Preparation of informative-educational materials in order to inform, educate and prevent high-risk situations in prisons for convicted persons serving prison sentences and officials from penitentiary-correctional institutions;
6. Distribution of free condoms among convicted persons serving prison sentences;
7. Cooperation with civil society organizations in prevention, support and treatment for HIV / AIDS / STIs / drug use of convicted persons who are serving a prison sentence;
8. Development of processes and protocols for dealing with convicted persons serving prison sentences in cooperation with the Ministry of Health and NGOs in the distribution of substitution therapy.

4.3. People with disabilities in prisons

People with disabilities are often discriminated against because of their mental and physical disabilities. Discrimination on this ground is making of any distinction, exclusion





or restriction on the basis of disability for the purpose or effect of violating or destroying the recognition, enjoyment or realization of an equal basis with others, of all human rights and fundamental freedoms of political, economic, cultural and civil and any other field. This form includes all forms of discrimination, as well as the denial of reasonable accommodation.²⁸⁴ This type of discrimination in everyday life, as well as within prisons, occurs in the form of lack of reasonable accommodation, such as lack of adequate access to facilities, elevators, means and aids for safe movement and assistance and etc.²⁸⁵

According to the case law of the European Court of Human Rights in the case of *Alajos Kiss v. Hungary* the Court states that people with disabilities are subject to historical prejudice with lasting consequences that have resulted in their social exclusion.²⁸⁶ Such prejudices are contained in the legal stereotypes that prohibit individualized assessment of the capacities and needs of people with mental disabilities.

With the adoption of the Law on Prevention and Protection against Discrimination in 2019,²⁸⁷ normative assumptions were created for substantial improvement of the system and institutional mechanisms that guarantee equality and ensure prevention and protection against discrimination. The implementation of the Law is largely conditioned by the establishment and functioning of the Commission for Prevention and Protection against Discrimination (hereinafter the Commission), as a special body for promoting equality and non-discrimination in society and providing protection to persons who have suffered discrimination.

The analysis shows that people with disabilities have insufficient knowledge and little personal experience with the Commission. The most common grounds for discrimination in our community are disability, health status and national or ethnicity, and areas of discrimination are social and health care, labor relations, access to goods and services, as well as education, science and sports. Most people with disabilities (70%) recognize discrimination as unequal treatment, while 33% define it as restricting rights and preventing access to goods and services (30%). In terms of enjoying equal treatment in society, only 17% of people with disabilities consider themselves enjoying equal treatment

²⁸⁴ The Court of Justice of the European Union in the case of *Sonia Chacon Navas v. Eurest Colectividades Sa* defined disability as "a limitation resulting from a physical, mental or psychological barrier that precludes the participation of the person concerned in their professional life."

²⁸⁵ For more see *Guide to the Grounds for Discrimination*, OSCE, 2013, p. 39-41.

²⁸⁶ See Z.Poposka, L. Jovevski, *Anti-Discrimination Law*, OSCE, Skopje, 2017, p. 21.

²⁸⁷ Official Gazette of RSM no. 08-2888 / 1 dated 16 May 2019





in society; 30% think that they do not have equal treatment, and 53% think that they have partially equal treatment in the society.

Consequently, as many as 73% of people with disabilities consider themselves discriminated against in our society, as opposed to 27% who believe that they are not discriminated against. The most common ground for discrimination was disability, faced by 57% of people with disabilities, followed by health status (30%) and nationality or ethnicity (20%). Every third person with a disability (33%) faced discrimination in the field of labor relations and social and health care, while 20% of them faced discrimination in access to goods and services. Discrimination was most often committed by state bodies and less by individuals.

People with disabilities stressed the need for more information and greater presence in the media, daily news and print media, because all people with disabilities do not have access to the Internet and do not know how to use this tool. It is also necessary to strengthen the capacities of persons with disabilities and their representative organizations for advocacy and involvement in the adoption of policies affecting persons with disabilities, especially for discrimination based on disability. It is necessary to harmonize the legislation, in accordance with the Convention on the Rights of Persons with Disabilities, which has been ratified by our country and according to which the concept of inclusive equality and non-discrimination is set as a principle and as a right.

People with disabilities face inaccessible infrastructure and facilities on a daily basis, but also with barriers to exercising their rights and receiving certain services by institutions. The premises of the CPD are inaccessible and inaccessible to people with disabilities. Also, the information in our country is not given in a format that is accessible to people with disabilities. The websites of the institutions, the media, and in this case the CPD, are not available to people with sensory and intellectual disabilities. Our state is obliged to provide accessibility - both physical and access to information for people with disabilities. Sign language, Braille and easy-to-understand formats are limited and under-promoted. The CPD must be accessible to persons with disabilities.

Persons with special needs or with disabilities, can also appear as persons sentenced to imprisonment.²⁸⁸ Their special needs often arise as a basis for discrimination. In that sense, in order to prevent discrimination on this basis, it is very important for the competent persons to identify persons with such needs, to recognize the problem and to respond

²⁸⁸ G. Poposka, *Discrimination based on disability in international human rights law*, Macedonian Center for Cooperation, Skopje, 2014.





appropriately to it. For that purpose, there is no doubt about the need for education for prevention of discrimination and appropriate response to it by the employees in the prison institutions. It is also necessary to remove all possible prejudices regarding communication with these people so that these people are less disturbed or separated from the group.

4.4. The older people (elderly) in prisons

Age is also the basis for discrimination.²⁸⁹ It refers to the age of the person who is a potential victim of discrimination. Discrimination on this basis is deeply rooted in the prejudices and stereotypes in society that a person's characteristics and qualities stem from his age.²⁹⁰ Sometimes, different treatment is provided within the legislation. As a result of this ground for discrimination, the term ageism has emerged as a deeply unpleasant phenomenon felt by young or middle-aged people.²⁹¹ Accordingly, age protection applies not only to persons considered older or younger, but also to any person who has potentially undergone illicit and unequal treatment because of their age. Specific to this type of ground for discrimination is the fact that people throughout life due to the natural process of growth and aging can be part of both protection groups.

In the case law of the European Court of Human Rights, which are related to the prison environment, there are cases of discrimination against persons on the basis of juvenile prevail.²⁹² However, there are no cases in which elderly applicants have complained of age discrimination.

In practice, most convicts are young. The cases of perpetrators of criminal acts are less frequent in old age. However, there are cases where elderly convicts or elderly convicts with disabilities may appear as victims of discrimination and unequal treatment by the prisoners themselves. However, the possibility of unequal treatment or the impossibility

²⁸⁹ *Guide to the Grounds for Discrimination ...*, p. 43.

²⁹⁰ See more at B. Kadriu, *Age Discrimination in International Human Rights Law*, Faculty of Law Justinian I Skopje, 2010.

²⁹¹ R. Butler, Age-ism: Another form of Bigotry, *The Gerontologist*, 1969.

²⁹² For more on this see *D.G. v. Ireland, Boumar v. Belgium and T. v. Great Briatain*.





of exercising certain rights due to physical or other obstacles may arise from the competent prison authorities. Therefore, it is very important to respect the legislation, as well as to prevent discrimination in practice in such cases. In most cases, the reasons for older prisoners are the result of serving a long prison sentence or life imprisonment. Exceptions are rare when the perpetrators of the crimes are over the age limit. The needs of younger and older convicts are different. Therefore, prison services should be careful in their treatment of persons according to their age and needs, in order to avoid discrimination on this basis.

4.5. Prevention of radicalization in prisons

As a result of the spread of radicalism in the world in the recent years, this phenomenon is also present on the territory of the Republic of S. Macedonia. The presence of right-wing groups and extremist religious groups leads to the emergence of violent extremism and other crimes against the territorial integrity and security of the state. By its very nature, violent extremism means the denial of democratic processes, democracy, and human rights and freedoms. Radicalism is the use of violence, terrorism and the spread of fear through illegal and prohibited actions, which poses a serious threat to humanity on a global scale.

In prisons, there are serving prison sentences and persons who took part in conflicts in the Middle East or prepared for terrorist acts in the country or abroad. Due to such cases in the society, but also in the prison environments, cases of discrimination on the basis of the religious beliefs of the convicts with Muslim confession may occur. In that sense, discrimination can be manifested as contempt by other convicts and prison staff, creating negative stereotypes, inciting discrimination, inciting physical and psychological violence, threats and more.

Republic of N. Macedonia has a strategically important geopolitical location with a complex social and multiethnic structure. Therefore, citizens need to show unity in dealing with organized crime and radical ideologies.²⁹³ This applies especially to those who call for violence and endangerment of the social and constitutional values of the state. Violent extremism and terrorism pose a growing international threat that is a significant motivator for the need for improved and enhanced collective security and institutional

²⁹³ See G. Marjanovic, *Criminal Law General part*, Studentski zbor, Skopje, 1988.





cooperation. It is therefore necessary for the competent authorities to prevent these challenges in modern society in a timely manner.

Violent extremism and terrorism are two separate and special problems that threaten the Republic of N. Macedonia, the Balkan countries and the wider international community.²⁹⁴ These threats are very serious if not treated in a timely, continuous and appropriate manner. The threats of violent extremism and terrorism are combined and intertwined, and are found in specific geopolitical locations within and outside the borders of nation states. In doing so, good practices must be taken into account that the more the capabilities and capacities for preventing violent extremism are developed, improved and maintained, the less the capacities and capabilities will have to be used in the fight against terrorism. The preventive approach to radicalization and violent extremism is the most economical way to deal with this problem. It must not be under-treated or completely ignored, given that the use of force is always the last, not the first, and only response option. Radicalization in itself is not a threat to society unless it is linked to violence or other illegal acts, such as incitement to hatred, which is legally defined in accordance with international human rights law.

Terrorist radicalization, however, is a dynamic process through which the individual is able to accept terrorist violence as a possible, even legitimate, course of action. There is no single profile that encompasses all terrorists, nor is there a clearly defined path that leads the individual to terrorism. Profiles built on stereotypical assumptions based on religion, race, ethnicity, gender, socio-economic status, etc., are not only discriminatory, but also ineffective, at the risk of exacerbating and fueling the spread of both phenomena. For these essential reasons, the identification of terrorism of any nationality, religion or ethnicity must be rejected.

Imprisonment is not only intended to punish the perpetrator of a crime. It also has its own re-socializing function, to correct the perpetrator and not to repeat the crime. Therefore, in such cases it is necessary to continuously improve the conditions in prisons, education of perpetrators, psycho-social support, etc. in order to realize the mistakes they have made and to change life perceptions.

²⁹⁴ V.Kambovski, *Criminal Law, General Part*, Culture, Skopje, 2004.





4.6. Emergencies and vulnerabilities of persons deprived of their liberty

Emergencies as special circumstances in society also have an impact on prison life. Therefore, proper planning for the prevention and management of such emergencies is necessary. A good system is needed that will function in practice, preparation and information of all stakeholders concerned with the state of emergency (natural disaster, military, emergency, crisis). One of those examples is the pandemic of the Covid 19 virus, which did not leave out the prison environment in its spread.

In order to prevent the uncontrolled spread of the deadly virus in prisons, it is also necessary to observe health measures of protection against the Covid 19 virus. In that sense, in the Macedonian prisons, the convicts who left the prison on the basis of trials, weekends or other work obligations and health needs, after returning are subjected to a series of checks. Temperature is measured immediately at the door, and rapid covidate tests are provided for the three largest prisons in the country. Such checks are performed in Idrizovo, in the Prison - Skopje and in the prison in Stip.

Despite the pandemic, prisoners were not denied the right to go home and have weekend leave at certain period. On several occasions, the Sanctions Enforcement Administration banned the use of such benefits due to the danger of Covid-19, depending on the recommendations of the Commission for Protection against Infectious Diseases. Despite the observance of protection measures, however, experience shows that the greatest transmission of the disease is actually through employees.

Prison services take strict rules to prevent the spread of the infection. Disinfection dispensers have been set up in several places, it is mandatory to wear masks, and if the symptoms of the virus appear, if necessary, the whole ward is placed in isolation. These are in order for the sick people not to come in contact with healthy convicts. According to the available information, the most infected with Covid 19 in prisons were in the period from November to December 2020, which had a large number of infected, a total of 31 of which one prisoner died.

In order to avoid unwanted deaths of convicts, it is necessary for the competent institutions to take timely and coordinated actions for full implementation of the recommendations of the WHO, the UN and the Council of Europe. This is necessary in order to avoid undesirable situations and to enable full respect for the right to health care and protection of human dignity of persons deprived of their liberty, persons employed in the prisons and families of these two categories of persons.





In order to comply with the protection measures and to avoid serious consequences, the prison authorities envisaged stricter measures to comply with the epidemiological recommendations. In that sense, it is provided for the employees who will not respect them and will be noticed without masks, there will be fines - 5% of the salary for disciplinary misconduct. According to information received from the prisons, 19 employees were infected by Covid, more than convicts.

Full, thorough and rapid implementation of the recommendations of the competent authorities, as well as international organizations is imperative for prevention and suppression of the occurrence and spread of COVID-19 among the prison and detention population. As a result, prison escapes, riots, and the uncontrolled spread of the disease are occurring almost all over the world. In Italy, for example, there have been several riots and more escapes since the government announced measures to prevent COVID-19 in prisons, but these measures were not in the context of recommendations from the WHO, the UN and the Council of Europe and were too restrictive. Six prisoners died and 20 escaped. In France, 10 days after the death of a 74-year-old detainee who tested positive for KOVID-19, it was reported that ten prisoners were already positive for KOVID-19, while 450 others showed various symptoms and were being tested. Although France is one of the countries that have adequate conditions in closed institutions for maintaining hygiene, as a result of the first case of COVID-19 in a closed institution in France, between 5,000 and 6,000 prisoners are waiting for the benefit of early release from serving special problems. In Colombia as a result of riots in prisons caused by fear of spreading the virus 23 prisoners died and 83 were injured, due to which Colombia is preparing a legal solution for amnesty of about 10,000 prisoners .

According to the European Prison Observatory, a publication analyzing the impact of Covid 19 on prison facilities lists a number of complaints as well as measures taken to protect against the virus in many European countries. In that sense, as preventive measures for protection of persons deprived of liberty and employees in prison are listed: 1) Limitation of the duration of visits; 2) Complete ban on visits and weekends; 3) Frequent disinfection of the premises where the convicts live and the employees work; 4) Increasing the time spent in the fresh air; 5) Ventilation of the premises; 6) Mandatory wearing of protective masks and gloves; 7) Mandatory temperature measurement at the entrance to the prison premises; 8) Increased vitamin nutrition; 9) Isolation of newly arrived convicts; 10) Increased health surveillance; 11) Allowed telephone communication in order to reduce depression and the introduction of a video calling system; 11) Posting signs for respecting the protection measures against Covid 19 and others.





4.7. Migrants as a vulnerable group

In recent years, the analysis of the situation and trends in the Balkan and European countries show increased migration and movements of migrants and refugees, many of which belong to vulnerable categories of persons, such as: unaccompanied children, potential and victims of trafficking, single parents with children, the elderly and people with disabilities. There has also been a significant increase in the number of illegal migrants and this trend is expected to continue in the next few years.

Migrants most often transit through the Republic of N. Macedonia, because the country is a crossroads of international corridors. There is also the so-called the "Western Balkans" route, through which over one million migrants and a large number of illegal migrants have passed in the last two years alone. Countries of origin of illegal migrants are Syria, Afghanistan, Pakistan, countries in the Middle East and Africa. Illegal migrants usually enter from the southern border of the Republic of N. Macedonia with the Republic of Greece, on the territory of the municipality of Gevgelija and the surrounding area. They leave the country mostly on the northern border with the Republic of Serbia, through illegal crossings in the municipalities of Kumanovo and Lipkovo. In addition, illegal centers of entry and exit from the country were discovered on several occasions.

There is also a branch through Kosovo, which is used as an alternative to the existing corridor to the Republic of Serbia. Transit through the Republic of N. Macedonia is implemented in an organized manner by criminal groups. Transportation is usually done by passenger motor vehicles or by buses, rare trains. The number of unaccompanied foreign children is also remarkable.

The growing number of legal migrants has caused incidents and tensions at the border, which has required the involvement of an increasing number of security forces to prevent illegal or unregistered migrants from entering. To discourage illegal entry, control and channel the flow of migrants to legal entry and migration crossings, a security fence was erected, reinforced in parts of the border suspected of being used for illegal crossing. Macedonian security forces managed to prevent the entry of over seven thousand illegal migrants in 2016 alone. Macedonian authorities have requested bilateral assistance from EU member states with border surveillance and equipment, as well as relocation of border police, to assist Macedonian border police with patrols, registration and identification and security checks. So far, several countries have decided to send police representatives: Croatia, Hungary, Serbia, Slovenia, the Czech Republic, Slovakia and Austria. Also, tackling human trafficking is still a challenge for the state.





Republic of N. Macedonia is not desirable place for the migrants. They just transit in the way to their destination. Most often, these are people from vulnerable categories, motivated by various social, economic and social factors, such as: poverty, gender discrimination, domestic violence and other personal conditions of the victim, such as age, health status, special needs and the like. Often these people are the target of attacks by certain criminals who rob them. In the period 2013-2015, 27 victims of human trafficking were identified who were the target of exploitation, as follows: labor - 3 persons, sexual - 9 persons, labor and sexual - 9 persons and forced marriage - 6 persons. Most often it is about women. Consequently, the competent institutions documented 244 cases related to human trafficking and illegal migration. In the period 2013-2015, human trafficking and illegal migration were reported against 338 persons, and 186 persons were sentenced. Of these, 11 received suspended sentences and 175 received effective prison sentences. Migrant detainees have the right to be treated like any other person deprived of their liberty. Therefore, from the very beginning, they have the right to be informed about the situation in which they find themselves and about their rights that belong to them in accordance with the legal regulations.²⁹⁵ All persons are equal before the law, regardless of gender, race, religion, nationality and have the right to protection in accordance with the Constitution and positive legal regulations. They had the right to an interpreter and to communicate with the relevant diplomatic and consular representatives. In this sense, migrants enjoy all the rights and freedoms guaranteed by international instruments, the Constitution and legal regulations, including the right to asylum.²⁹⁶

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²⁹⁵ Lj. Frckoski, *International Human Rights Law*, Magor, Skopje, 2015.

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CHAPTER V

5. CRIMINAL OFFENSES WITH INCREASED RISK OF DISCRIMINATION

Authors: Daiana Huber, Anca Popescu

General considerations

Understanding biases and unconscious mental shortcuts

Biases, both implicit and explicit, are the result of *automaticity* processes that help regulate the brain's ability to receive, analyse and respond to external stimuli. These nonconscious paths serve as a “default, background regulatory function, freeing the conscious mind from the concerns of the immediate environment”.²⁹⁷

Given the enormous amount of both internal and external stimuli the human brain has to process on a daily basis, the natural tendency is to categorise and group information, creating access shortcuts that can reduce the time it takes to respond to a particular action, context or individual. Aside from the categorising of experiences, objects and contexts, this sorting tendency is also a useful tool for processing information about people, their actions, and behaviours, allowing our brains to make sense of order and predictability, which can guide social interactions.

In order to group individuals into a particular social category, we subconsciously take a route often based on visible features that offer the most obvious intergroup differentiations and the minimum intragroup variation.²⁹⁸ Various forms of social representations therefore become automatically activated as a result of the presence of certain features deemed corresponding. For example, features related to age, gender and race automatically prompt group categorisations, and affective responses towards other people can become instinctual reactions triggered by the features of that person, activating mental representations, and indirectly influencing our reactions. These mental shortcuts can be constructed either from direct personal experiences or through indirect knowledge of a stereotyped group.²⁹⁹

²⁹⁷ (Bargh & Williams, 2006)

²⁹⁸ (Mateeva & Dimitrov, 2013).

²⁹⁹ (Bargh & Williams, 2006)





Whilst some categorisations are based on informed generalisations and are beneficial to increasing the speed with which we process and understand the world around us, most stereotypes are actually invalid - particularly when they stem from features distinguishing race, religion, gender, and other physical traits. Research in the field of social psychology, focusing in particular on nonconscious automaticity processes, has highlighted that the arbitrary, biased, and often prejudicial nature of mental shortcuts in the form of stereotypes is detrimental to objectively navigating social interactions.³⁰⁰ The pre-formed ideas we refer to when processing social cues through stereotypes can, directly or indirectly, lead to:

- a. *an exaggeration of ingroup similarities/outgroup differences (both negative and positive),*
- b. *an underestimation of individual attributes and characteristics,*
and ultimately to:
- c. *differential treatment and behavioural responses based on these assumptions.*

One of the most important considerations to keep in mind when attempting to understand biases, and the potential negative influence they can have on the way we respond to our social environment is **vulnerability**. To be aware of individual vulnerability, the notion of risk must be addressed. For the purpose of this training material, we will appreciate risk as the known or unknown probability distribution of events,³⁰¹ which can increase or decrease, depending on what happens around us, how others respond to us and what we can do to control that. Vulnerable individuals might be sorted in a group category that best fits their features (ethnic minority, religion, gender, disability etc) but, as we already discussed, the sorting mechanisms and mental shortcuts we unconsciously use can be flawed.

All individuals coming into contact with a criminal justice system can be considered vulnerable, a vulnerability which can be heightened by their direct interaction with lengthy criminal proceedings, time spent in detention and re-entering society after time served. Many of the systems offenders interact with continue to be constructed for a homogeneous population and can be discriminatory. Specific groups of people, particularly those who are already stigmatised and discriminated upon prior to entering the criminal justice system require a particular approach to protect their rights, as their

³⁰⁰ (Brewer, 1988).

³⁰¹ (The World Bank, 2001),





individual circumstances and vulnerabilities can place them at a higher risk of violence or neglect.³⁰²

Furthermore, the stigma associated with a marginalised group (and, implicitly, the stigma of an individual) increases upon conviction, incarceration, and release. The deeply rooted personal biases we have towards the *double stereotyped persons* (vulnerable/marginalised individual & convicted offender) can influence key aspects of the procedural justice in prisons: **neutrality, treatment with respect and dignity, voice, and trust.**³⁰³ The dynamic between stereotypes and the expressed behaviours towards an individual is particularly strong in the associations between race and crime,³⁰⁴ but is also visible in the impressions towards offenders depending on age, gender, and type of crime, amongst other contexts.

Sources and types of bias

Now that we have a clearer picture of how biases are constructed and why we unconsciously use them, it is important to acknowledge their source. The ingroup/outgroup dynamic we mentioned above is one of the most important sources of bias addressed in the existing literature.³⁰⁵ The flaws in this dynamic stem from an innate need to be part of a group, attaching our identities to ambiguous notions of class and race.

Main bias and error sources:

- ➔ Our personal contact with *the other* (individual or group)
- ➔ Our knowledge, thoughts, and perceptions of the group to which *the other* belongs to.

*Most common types of bias in correctional services:*³⁰⁶

- a. **Representative** beliefs that knowledge of one individual of a particular group results in knowledge of all individuals belonging to the same group.

³⁰² (Jackson, Tyler, Bradford, Taylor, & Shiner, 2010).

³⁰³ (Jackson, Tyler, Bradford, Taylor, & Shiner, 2010).

³⁰⁴ (Brennan Center for Justice, 2015),

³⁰⁵ (Bargh & Williams, 2006).

³⁰⁶ (Hollows, 2008)





- b. **Confirmation** approaches that allow us to only pay attention to the information that supports the judgement we have already formed about an individual or group.
- c. **Availability** of information sources and the overreliance on easily obtained knowledge.
- d. **Conscious or unconscious discrimination** based primarily on class, gender, race, sexuality, and beliefs.
- e. **Invalid models and representations** rooted in subjective media representations.
- f. **Unreal optimism** represented through a strong belief that progress is being made, despite clear signs of the opposite.
- g. **Fear** towards a particular individual or group

Identifying and reducing your bias

For the purpose of this training material, we have identified a number of good starting points to reduce your bias:

- a. Work on **consciously acknowledging and changing** the mental shortcuts you take - you will be able to adjust your responses to an individual when you consciously recognise if your response to that person might stem from stereotypes and biases.
- b. **Pause & reflect** - think where your biases come from and try to replace them with positive examples for the stereotyped group.
- c. **Individualise, do not generalise** - avoid using stereotypes that define a particular group. Instead, spend time looking at each person independently from their group characteristics.
- d. **Be flexible** in your perspective and approach: recognise the factors that contribute to how people react to another's actions. How would you respond if you were in the same position?
- e. **Increase contact and exposure** – through increased contact with individuals categorised as *the other*, familiarity increases, and mental shortcuts used for processing external stimuli will slowly be replaced by cues that allow us to respond to individual actions accordingly.





Exercises

Example worksheets are available at the end of this document (Appendix A). They can be amended to best fit our needs. Original source: [Introduction | Notes for Trainers | ROH V4.36](#)

5.1. Domestic Violence

Authors: Diana Elena Conac and Cristina Busuioc

Introduction:

When we talk about domestic violence, it would be necessary to give a definition of the notion of violence. “The notion of violence is defined by acts that refer to the call to force, coercion or violation of the rules and rights of the other. Thus, violence consists of the whole of aggressive behaviors to which a physical or moral stronger person subdues a weaker one: bad behavior (abused children), acts of violence by the partner (beaten women) or even criminal actions.”³⁰⁷

Department of Justice from Canada define the family violence as “Family violence is considered to be any form of abuse, mistreatment or neglect that a child or adult experiences from a family member, or from someone with whom they have an intimate relationship.”³⁰⁸

In Romania, there is a law for the prevention and combating domestic violence - Law no. 217/2003. According to the Law no. 217/2003 for the prevention and combating of domestic violence this represents “any physical or verbal action committed with intent by the family member against another member of the same family, which causes physical, sexual or material harm”. Following the article 2-2, it mentions that it is domestic violence “to impede the woman from exercising her fundamental rights and freedoms” violence.³⁰⁹ The updated Romanian Criminal Code, in Chapter III provides the sanctions for

³⁰⁷ Turliuc M.N., Huțuleac K. A., Dănilă O. (2009) -Violența în familie. Teorii, particularități și intervenții specific, Editura Universității Alexandru Ioan Cuza, Iași, 2009, https://www.researchgate.net/publication/273454357_Violenta_in_familie_Teorii_particularitati_si_interventii_specifice, available on 1.03.2021, pg. 10

³⁰⁸ <https://www.justice.gc.ca>

³⁰⁹ Monitorul Oficial partea I nr.367/29 mai 2003, cap.I, art. 2-1, (2003).-Legean.. 217/2003 pentru prevenirea și combaterea violenței în familie





aggravation in case of domestic violence. Also, a recent Law no. 233/2020 removed the possibility for the reconciliation of the parties and the criminal liability, in case of domestic violence.

Social context of domestic violence with reference to violence against women:

Domestic violence does not depend on age, sex, level of education or social class. This exists both in the majority population and in ethnic or sexual minorities. Regardless of who is the aggressor and who is the victim a woman, a man, a child, an elderly person, the consequences of domestic violence are serious.

The domestic violence can be physical, sexual, psychological, mental, verbal and economic. Physical violence refers to the physical aggressions that has the role of hurting and harming a person or even killing it. Sexual violence refers to the sexual intercourse or sexual exploitation of a family member without the person's consent. This includes marital or relationship rape, sexual harassment, or exposing a person to pornographic material. Psychological violence refers to the provocation of emotional suffering. "If proving physical violence is difficult in some cases, proving psychological violence is more difficult. This is manifested by attitudes such as humiliation in public, interdiction for leaving home, locking down a woman in the house, scaring or intimidating and threatening... So, in case of psychological violence, for example, it will be difficult to prove the act of violence if there are no threats. That is why there are not many examples of such violence in judicial practice, although the victims present states of disturbance, fear, danger, since it must be proven a state of tension and mental suffering caused by an act of violence."³¹⁰

Mental violence refers to the abuse of power and control. This generates states of fear, humiliation, insult, terror and threat. Mental violence leads to isolation of the person from family members or friends. Verbal violence is manifested by shouting, insults, swear words and denigration. We are also talking about economic violence when the victim is deprived by means of subsistence. When we talk about domestic violence, we must remark that it is usually against women, children or the elderly. Domestic violence has different manifestations from physical violence to the attitude of passivity and indifference, refusal of help, irony, teasing or permanent threats. Violence is closely linked with the notion of aggression. Studies conducted in the field of psychology and sociology reveal that the

³¹⁰ Popescu S., Martimof L., (2020)-Protecția relațiilor de familie în dreptul penal român, <https://www.juridice.ro/680697/protectia-relatiilor-de-familie-in-dreptul-penal-roman.html>, article available on 1.03.2021





manifestation of an aggressive behavior is learned. The environment is an important factor in this learning process. In the social environments where women are considered inferior, violence against them is common. In the society where discrimination against women is accepted and tolerated the violence against women is equally accepted and tolerated.

Regarding the types of domestic violence in an article published online was presented the observations made by the Center for Family Justice (USA). According with the Center for Family Justice (USA), family violence can be defined as “domestic abuse is a pattern of coercive, controlling behavior that is a pervasive life-threatening crime affecting people” across different demographic groups. This non-profit organization dedicated to helping survivors and victims of domestic abuse, have identify five forms of domestic violence: physical abuse, emotional abuse, financial abuse, stalking and sexual abuse. Further, we present the major forms of domestic violence as they are showed by The King University, based on the forms of domestic abuse mentioned by The Center for Family Justice:

Physical abuse: This kind of violence that occurs when a family member attacks or aggresses onto another member of the family. The organization made note that this form of abuse doesn’t always leave permanent marks

Emotional abuse: When someone in the household actively attempts to humiliate, intimidate, and/or manipulate children or their partner, they commit emotional abuse. Neglect can also fall under this umbrella term. The Center for Family Justice clarified that it can be “verbal or non-verbal.”

Financial abuse: This form of family violence occurs when one member of the household puts the victim or victims in a position where they feel entirely dependent on the abuser monetarily. The abuser manipulates the victim into thinking they are helpless because of their financial dependence.

Stalking: Stalking is a type of family violence when members of the household (who still live in the family unit or who have been removed) obsessively track a victim’s location and make frequent demands to meet physically.

Sexual abuse: The organization rightly has stated that sexual violence still happens “in committed relationships and marriages.”³¹¹

Domestic violence can cause serious consequences for women as victims such as: the occurrence of acute or chronic diseases, disability, alcohol or drug addiction, anxiety,

³¹¹ <https://online.king.edu/news/social-work-family-violence/>





low self-esteem, occupational consequences due to poor professional performance, low economic status, isolation from family and friends and inability to deal with their finances, enhanced by the fact that the abuser often has all the economic and social standing and complete control over the family finances. Another important consequence of domestic violence is around the child who is the witness or the victim of violence, who can experience violent reactions, low self-esteem, anxiety, lack of self-confidence, difficulties in social adjustment, tics, insomnia and depression.

“The National Criminal Justice Reference Service has said that family violence ‘covers a broad range of acts that can include emotional, financial, physical, and sexual abuse,’ and that the children who fall victim to family violence are ‘more likely to have difficulty in school, abuse drugs or alcohol, act aggressively, suffer from depression, and engage in criminal behavior as adults.’ While these explanations help cast a light on the problem, more context is necessary to fully understand the nuances and prevalence of domestic abuse. Moreover, the U.S. Department of Health and Human Services’ (HHS) Office on Women’s Health gave closer, clearer attention to the ways that domestic violence affects children. They stated that children who experience family abuse exhibit symptoms like severe anxiety and depression. These mental health problems extend into adulthood for many children.”³¹²

According to the Romanian police website, the main common causes of domestic violence are:

-Social causes - A cultural mentality that discriminates women and children, considering that the man is the person who takes all the decisions in the family, is favorable for domestic violence. Here we can also include the existence of violent subculture environments. Also, the presence of violence in society, resolving conflicts by force and cultural norms that allow domestic violence, are favorable factors in a growing domestic abuse. In Romanian culture is a saying that describes the use of physical abuse in parenting, which says that physical abuse is slice of paradise.

-Economic causes - Low family income can generate tensions and violence in the family but this phenomenon of domestic violence is present and in families with a good financial situation. Another aspect, not to be neglected, is the discrimination on the labor market of the women which often generates their financial dependence by their husbands and implicitly women become more easily victims of domestic violence.

³¹² <https://online.king.edu/news/social-work-family-violence/>





-Causes generated by the political and legislative situation - Considering the family as a closed environment, as an untouchable space even for the police, is favorable to domestic violence. In many states until recently, the legislation did not have provisions strictly related by the domestic violence. Many imperfections in existing legislation can be detrimental for victims. Currently in Romania, domestic violence is a crime, provided and sanctioned as such by the Romanian Criminal Code since 2000 (Law 197/2000). "Domestic violence is different from other types of violence, because it occurs behind the closed doors, with the tacit consent of all, through non-intervention or inefficient intervention."³¹³

Regarding the socio-cultural context of domestic violence, we must mention that violence against women or children was been long time accepted, tolerated or ignored. The starting point of this problem is discrimination against women and children by the society. Marriage laws used to give the husband full power over his wife and children. The legislation of the Roman Empire, for example, was based on this discriminatory idea. Even in the United States, until 1870, physical aggression against the wife was a legal fact. In Romania, the Civil Code from 1865, stipulated the domination of the husband, the woman was deprived by her rights. Only the Romanian Constitution from 1948 introduced the equality of all citizens regardless of gender. If from a legal point of view this equality is stipulated by the Constitution, in fact, in Romanian society, the acceptance of violence against women or children was perpetuated in many communities and families.

Educational causes - The lack of education about preventing and combating domestic violence through schools and mass-media generates an attitude of acceptance. In modern society there is also a crisis of authority in the family and in the school with consequences on the education of young people.

Psychological causes - These causes are individual and refer to the personality structure, temperament and character of family members. Here we include individuals who unload their aggression on the weak family members, parents on children and young people on the elderly. Also here we include mental health problems and jealousy.

There are a lot of myths about domestic violence. Thereby it is considered that domestic violence is not something serious and is even a "normal" aspect in some families. Many consider that the family violence is not a common phenomenon and occurs in very poor environments and in people with a low level of education. However, it turned out that domestic violence is also present in rich families as well as in those with a higher level of education. In addition, another misconception is that violent men are mentally ill, but some research shows that only 10% of male aggressors suffer from mental disorders. Another

³¹³ <https://if.politiaromana.ro/ro/prevenirea-criminalitatii/violenta-in-familie>





misconception is that beating is a good tool for children education. Modern psychology has shown that, on the contrary, the aggression towards the child generates fear, isolation, learning aggressive behavior and thus it is not a factor for encouraging education. “Domestic violence is a reality facing all regions of the globe. In the case of domestic violence against women, for example, a study conducted in Germany (Federal Ministry for Family Affairs, Senior Citizens, Women and Youth BMFSF, 2004) indicates that one from four women has experienced physical or sexual violence from her partner. According to British Crime Survey (quoted by Walby and Allen, 2004), in the UK 21% of women have been the victim of physical or psychological violence by their partner at least once in their lifetime. A study conducted in Finland (Heiskanen and Piispa, 1998) indicates that 20% of women who have a relationship, answered that they endured partner violence. However, there are surveys and studies that show that between 30% and 70% of women endure physical and psychological violence from their partner and the data from Romania are very similar.”³¹⁴

A survey about domestic violence against women and minors carried out at European Union level by the Fundamental Rights Agency shows us worrying issues.

“An estimated 13 million women in the EU states were subjected to physical violence in the past 12 months before the interviews”, “only 14% women reported the worst incident of domestic violence to the police and only 13% reported the worst incident of violence caused by someone other than his life partner.”³¹⁵

The domestic violence is also closely linked to other crimes such as murder, rape, sexual intercourse with a minor, sexual aggression, family abandonment or bad treatment of a minor, hitting or other violence, personal injury through fault. “The overview of these facts is different in terms of values in European countries, usually being considered issues related to privacy, which are not discussed with other people and must be resolved within the family. Related to the domestic violence, if we compare it with international regulations, we observe that, actual Romanian Penal Code included in chapter III –art.199- The domestic violence and there is mentioned how this is the aggravating circumstance when the victim is family member. This may be due to the general view of domestic violence at the national level, as it is still considered within families to be normal behavior, which occurs in any family, so the legislator considered that by incriminating in a separate

³¹⁴ Turliuc M.N., Huțuleac K. A., Dănilă O. (2009) -Violența în familie. Teorii, particularități și intervenții specifice, Editura Universității Alexandru Ioan Cuza, Iași, 2009, https://www.researchgate.net/publication/273454357_Violenta_in_familie_Teorii_particularitati_si_interventii_specifice, available on 1.03.2021, pg. 19

³¹⁵ Violența împotriva femeilor: o anchetă la nivelul UE, 2014:17, 24





article of family violence, a greater impact would be reached both sociologically and to an appropriate sanction, taking into account the ‘weight’ of family relations from the perspective of the Romanian society, a society conservative with this value.”³¹⁶

As we have previously presented, domestic violence conducted to crimes and the aggressors can be condemned to the detention penalty. Their detention status is different. Those with rape and especially sexual intercourse with a minor risk in many situations becoming victims of discrimination or aggression by other detainees. “All detainees may be vulnerable to some extent (for example, due to overcrowding, poor physical condition, isolation or inadequate activities). However, some groups of detainees are at greater risk of mistreatment than others... In the criminal justice system, equality and fairness are intertwined. It is important that policies for preventing discriminatory practices to be implemented in prisons. Discrimination on the criteria like nationality, ethnicity, race, origin, sex, sexual orientation, gender, identity, age, disability, health status, sentence or other status may be stopped; but this does not prevent the recognition of the special needs of certain groups of detainees”.³¹⁷

This problem of discriminating against detainees according with different criteria is also found in Romanian penitentiaries. “In the penitentiary environment, the terrorist phenomenon expresses the tendencies of domination of certain detainees, in order to obtain some privileges and which frequently take the form of systematized acts of harassment, significantly disrupting the order and control of these units. The categories of detainees who are being frequently terrorized are the young without physical strength, those who are for the first time in prison, the less intelligent, and the ‘sex offenders’, drug users and debtors. The most frequently invoked reasons refer to the seizure of the victims’ personal belongings, forcing him to do certain services for the recovery of debts (cigarettes, food, money, clothes, coffee, and drugs) or for the pleasure of humiliating the other. About the category of acts for terror among detainees, we mention dispossession, intimidation, rumors, hitting, cursing, and interdiction from walking or watching TV, insulting the family, forcing them to do something or staying in certain place.”³¹⁸

³¹⁶ Popescu S., Martimof L., (2020)-Protecția relațiilor de familie în dreptul penal român, <https://www.juridice.ro/680697/protecția-relațiilor-de-familie-in-dreptul-penal-roman.html>, article available on 1.03.2021.

³¹⁷ Murdoch J., Jiricka V. (2016). *Combaterea relor tratamente în penitenciare* /- Chișinău 2016 (F.E.-P. „Tipografia Centrală”), <https://rm.coe.int/2-combaterea-relelor-tratamente-in-penitenciare-final/1680722471>, available on 1.03.2021, pg. 57

³¹⁸ Ardelean C., (2010), *COORDONATE PSIHOLOGICE ALE PERICULOZITĂȚII ÎN MEDIUL PENITENCIAR* (teză de doctorat), Universitatea Babeș-Bolyai, Cluj Napoca, https://doctorat.ubbcluj.ro/sustinerea_publica/rezumat/2010/psihologie/ardelean_calin_petrica_ro.pdf.





A study, conducted in the Republic of Moldova by the Institute of Criminal Reforms within the “Strengthening the Reform of the Criminal Justice System of the Republic of Moldova” project, aimed at analyzing personal security in prison from the perspective of relations between detainees, reflects that those incarcerated for certain crimes such as rape, become victims of aggression and discrimination in detention. The situation is even worse if the criminal offence was committed in the family. “According to the opinion of detainee respondents, most often appear as victims of conflicts and abuse, the people who do not know how to talk and behave with other people (22% of detainees respondents), people with a lower position among detainees (18% respondent detainees), persons who were not incarcerated before (15% respondent detainees) or those who are convicted of certain categories of offenses (12% respondent detainees) ... In the opinion of the representatives of the penitentiary administration, most often as victims of violence between detainees are people with a lower status in the criminal hierarchy (20%); people from poor families (13%); persons condemned for certain distinct categories of offenses, for example rape (11%); sexual minorities (9%); people with communication deficiencies (8%); people who do not have prison experience(7%)”.³¹⁹

A sociological analysis of prison life in Romanian penitentiaries shows that the crime for which a person is convicted will affect his status in prison. “The social hierarchy of detainees partially overlaps with legal definitions, prison experience, the type of crime and age are the factors that structure the world of detainees... The lowest position in the world of detainees is occupied by a special category of persons, the convicts condemned for sexual offenses and those who, in order to survive in prison, provide sexual services to other detainees... Detainees convicted for sexual offenses, especially against children, have been a permanent object of ridicule and violence since entering in the correctional institution.”³²⁰

A study about subject of taboos and rituals in prison, from Republic of Moldova, conducted in the Penitentiary of Goian, shows that the situation is identical in the case of prisons for young people and minors. The opinions of the employees regarding the acceptance of the new inmate by the detained young/minors reflect the connection between

available on 1.03.2021, pg. 13

³¹⁹ Igor D., Zaharia V., (2014) -Securitatea Personală în mediul penitenciar, Institutul de Reforme Penale- editura Cartea Juridică, Chişinău, Republica Moldova http://irp.md/uploads/files/2014-03/1394397645_studiu-securitatea-personala-in-mediul-penitenciar.pdf, available on 1.03.2021, pg. 22

³²⁰ Dobrică, P. (2010). Viaţa cotidiană în închisoare Putere, ierarhi sociale, sexualitate: Daily life in prison. Power, social hierarchy, sexuality. Sociologie Românească, 8(3), 24-38. Retrieved from <https://revistasociologieromaneasca.ro/sr/article/view/323>, available on 1.03.2021, pg. 28-33





the crime committed and the status that the newcomer will have within the group of young people in detention. “It depends on the crime committed and how the person imposes himself. Those with rape are looked down upon, isolated, they eat at another table, they have a different status there”.³²¹

Conclusions:

In conclusion, regarding the detainees convicted for crimes related with domestic violence, we can say that they can also become victims of violence in detention. Prison staff must take into consideration these risks for the detainee of being discriminated or aggressed. It is important to maintain good communication between employees and detainees and the staff must adopt a non-discriminatory attitude. Another important aspect is to intervene immediately in case of violence and abuse and apply the necessary legal measures. If necessary, they can be moved to protective rooms. Another important aspect of the intervention regarding the detainees who had have violent behavior in their family is including them in specialized programs for preventing domestic violence or in specific programs, like reducing aggressivity or sexual offences. Psychological counselling on domestic violence can have beneficial consequences for their social reintegration.

Institutional and international frameworks relevant to domestic violence and violence against women:

The issue of domestic violence has been of concern for the international community since the last century, with various declarations and conventions being adopted at the level of the United Nations and in Europe, especially at the level of the European Union.

The main international provisions that states have acceded to regarding domestic violence and in particular regarding violence against women are:

-December 10, 1948- The United Nations General Assembly adopts the Universal Declaration of Human Rights in Paris. On article 7 is stipulated “All are equal before the law and are entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of this Declaration and against any incitement to such discrimination”

-December 18, 1979 -The United Nations General Assembly adopts Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in New

³²¹ Saharneau E., Mărgărint T , (2017) – Tabuurișirituri de trecereprezenteînpenitenciarulpentruminoriGoian, Centrul de CercetăriCalitativeînAntropolgieChișinău, Republica Moldova,
https://nettsteder.regjeringen.no/norlam/files/2017/08/Rapoarte_06.pdf, available on 1.03.2021, pg. 13





York. The convention was ratified by Romania in 1981. The implementation of the convention is monitored by a committee that prepares country reports and makes recommendations.

-November 20, 1989- The United Nations General Assembly adopts Convention on the Rights of the Child.

- December 20, 1993 - Declaration on the Elimination of Violence against Women proclaimed by United Nations General Assembly (resolution 48/104)

Declaration on the Elimination of Violence against Women(article 2) describe the domestic violence as:

“Violence against women shall be understood to encompass, but not be limited to, the following: (a) Physical, sexual and psychological violence occurring in the family, including battering, sexual abuse of female children in the household, dowry-related violence, marital rape, female genital mutilation and other traditional practices harmful to women, non-spousal violence and violence related to exploitation; (b) Physical, sexual and psychological violence occurring within the general community, including rape, sexual abuse, sexual harassment and intimidation at work, in educational institutions and elsewhere, trafficking in women and forced prostitution; (c) Physical, sexual and psychological violence perpetrated or condoned by the State, wherever it occurs.”

-September 4-15, 1995- The Fourth World Conference of Women adopts Beijing Declaration and a Platform for Action were adopted reaffirming that equality between women and men is a condition for full respect for human rights. The European Union has expressed its political support for the implementation of these goals and continues to monitor the state on implementation at the level of European governments.

-May 11, 2011- Council of Europe Convention on preventing and combating violence against women and domestic violence open for signature by the member States, the non-member States which have participated in its elaboration and by the European Union, and for accession by other non-member States the Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence. The Convention also establishes a specific monitoring mechanism (“GREVIO”) in order to ensure effective implementation of its provisions by the Parties.

-September 25, 2015- The United Nations adopted the 2030 Agenda for Sustainable Development which sets out 17 sustainable development goals and 169 targets to be achieved by 2030.





The document states that in order to reduce global inequality between women and men, any form of violence and discrimination against women must be eliminated.

-July 1, 1999 – The European Social Charter (revised) has been ratified. The European Social Charter (revised) guaranteed fundamental social and economic rights of all individuals in their daily lives.

-April 2018-The Council of Europe adopted an important document Gender Equality Strategy (2018-2023) which, in strategic objective 2, provides the prevention and combating of violence against women and domestic violence.³²²

During 2018 and 2019, the EU allocated more than € 62 million in humanitarian aid for the prevention and for response to sexual and gender-based violence worldwide. The European Commission is also an active member of the global initiative Call to Action on Protection of Gender-Based Violence in Emergencies. The European Commission will present a new legislative initiative on gender-based violence against women and domestic violence and launch a campaign to address stereotypes. This is leading a social media campaign #SayNoStopVAW to stop violence against women.

We can also mention some recommendations of the Committee of Ministers addressed to the member states of the Council of Europe: Recommendation Rec (2002) 5 on the protection of women against violence, Recommendation CM / Rec (2007) 17 on standards and mechanisms for ensuring gender equality.

In addition, in order to monitor the phenomenon of domestic violence and to verify the ways in which the international conventions ratified by various states are respected, the international bodies specialized in this field have been set up. “The establishment of the Special Rapporteur on Violence against Women (SRVAW) mandate and the appointment of an incumbent in 1994 was part of a series of developments that finally accorded explicit recognition to violence against women (VAW) as a human rights concern within the United Nations. Thirteen years after the coming to force of the Convention on the elimination of All forms of discrimination against Women (CEDAW)—the ‘Women’s Inter-national Bill of Rights’—the expert committee monitoring the convention adopted general Recommendation 19 in 1992, thus filling a major gap in the convention. In 1993, at the Vienna Conference, the international community officially recognized VAW as a human rights violation, and the same year the general Assembly adopted the declaration

³²² <https://rm.coe.int/strategy-en-2018-2023/16807b58eb>





on the elimination of Violence against Women (de VAW). These developments set the stage for the creation of a special mechanism to monitor VAW worldwide.”³²³

The European Institute for Gender Equality (EIGE) is monitoring violence against women policy within the Gender Equality Index. It is collecting data on intimate partner violence, rape and femicide in the EU. “More than one woman was killed every day by an intimate partner or family member in the EU on average in 2016. To help police prevent repeated acts of intimate partner violence and save lives, the European Institute for Gender Equality (EIGE) has developed a risk assessment guide for police. EIGE’s guide shows the benefit of the police, justice and health sectors working together to make sure that victims get the essential services in time. These can range from counselling services to financial assistance.”³²⁴

Eurostat is developing an EU-wide survey to get updated figures on violence against women in the EU. The survey will be run in Member States from 2020 onwards and results are expected in 2023.

The Platform of Independent Expert Mechanisms on Discrimination and Violence against Women (EDVAW Platform) gathers seven United Nations and regional independent expert mechanisms on violence against women and women’s rights operating at the international and regional levels, including GREVIO- Group of Experts on Action against Violence against Women and Domestic Violence.

Under the Rights, Equality and Citizenship Program and its successor, the Commission finances projects to prevent and combat gender-based violence and violence against children. During the program period of 2014-2020, the budget of these projects is approximately €105 million.

Although international conventions against domestic violence have been written and signed, and most countries in the world have made progress, there are still problems in this field and the effort of states must continue.

On November 25, 2019, when was celebrated the International Day for the Elimination of Violence against Women, the representative of European Commission, Federica Mogherini made the following declaration:

³²³ THE UNITED NATIONS SPECIAL RAPPORTEUR ON VIOLENCE AGAINST WOMEN (1994-2009)-A CRITICAL REVIEW, <https://www2.ohchr.org/english/issues/women/rapporteur/docs/15YearReviewofVAWMandate.pdf>, available on 1.03.2021, pg. 1

³²⁴ <https://eige.europa.eu/news/risk-assessment-protecting-women-lethal-violence>





“Violence against women and girls is violence against all of humanity and we should not tolerate it in Europe or anywhere else in the world. But we all know that, despite our best efforts, we are still far from winning this battle. Violence against women is happening everywhere, there is no safe haven, not even in one's own family, on the contrary. Women are victims of violence in their own families, as are victims of violence in the workplace, in schools and universities, on the streets, as displaced persons and as migrants, and increasingly in the online environment through cyber violence and speech. The problem has become so alarming that in Europe, one from three women has been the victim of physical and / or sexual violence. In the EU, almost all victims of human trafficking for the purpose of sexual exploitation are women and girls. In developing countries, one in three girls is married before the age of 18. Worldwide, the number of women and girls who have undergone genital mutilation, a practice that persists in about 30 countries, is at least 200 million. It is our responsibility, within the EU and the international community, to maintain our commitment to prevent, unequivocally reject and condemn all forms of violence against women and girls.”³²⁵

Legislation and institutional frameworks in Romania:

In Romania we can talk about important progress in the last decade in terms of developing national legislation to combat the domestic violence effectively.

The main legislative provisions are:

-Law no. 217/2003 of May 22, 2003 for preventing and combating domestic violence

According to the provisions of Law no. 217/2003 for the prevention and combating of domestic violence, the protection and support of the family, the development and consolidation of family solidarity, is an interest national objective. The prevention and combating of domestic violence is part of the integrated policy of protection and support of the family and public health policy. This initial law was improved along the way by the appearance of the following laws: Law no. 25 of 2012 and Law no. 174/2018 of July 13, 2018. The improvements was focused on protecting victims and effective and quickly intervention in such situations by the police. Also for a good intervention was elaborated and approved the Order of the Minister of Labor and Social Justice no. 2525/2018 regarding the approval of the Procedure for intervention in cases of domestic violence. The Decision of the Romanian government HG no. 49/2011 was very important because this approved two methodologies: Methodology on prevention and intervention in multidisciplinary and networked teams in situations of violence against children and

³²⁵ https://ec.europa.eu/romania/news/20191125_stop_violentei_impotriva_femeilor_ro





domestic violence and the Methodology of multidisciplinary and inter-institutional intervention on children exploited and at risk of exploitation through work, child victims of human trafficking, as well as Romanian migrant children victims of other forms of violence on the territory of other states;

-*Order of the Minister of Labor, Family and Social Protection 383/2004* about the approval of quality standards for social services in the field of protection of victims of domestic violence

-*Order 384/July 12/ 2004* for the approval of the cooperation procedure in the prevention and monitoring of cases of domestic violence

-*Order 385/July 21/ 2004* on the approval of the instructions for the organization and operation of units for the prevention and combating of domestic violence

-*Romanian Criminal Code*- in Chapter III provides for aggravation of sanctions in case of domestic violence. For crimes such as hitting or other violence, culpable bodily harm (Penal Code art. 193 and art. 196) committed against a family member, the criminal action may be initiated ex officio.

-*Law no. 30/2016 of 17 March 2016* for the ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, adopted in Istanbul on 11 May 2011

-*Law no. 233/2020* which removed the possibility for the reconciliation of the parties to remove criminal liability in case of domestic violence. All these legal provisions supporting the preventing and combating domestic violence and created the necessary procedures for intervention to support victims of domestic violence.

Also for this purpose, there are several public institutions in Romania that have attributions in this field. The main institutions are:

-National Agency for Equal Opportunities between Women and Men.

-National Authority for the Protection of the Rights of the Persons with Disabilities, Children and Adoptions.

-General Directorates of Social Assistance and Child Protection existing at the level of each county; some of these institutions developed social services for victims of domestic violence.

In addition to these public institutions, there are also Romanian non-governmental organizations that have developed specialized social services. In these social services, the





victims, depending on their needs, benefited from accommodation, food, medical care, psychological and legal counselling. Following the mapping of existing social services to prevent and combat domestic violence, it is easy to see that they are insufficient and not developed in a geographical distribution appropriate, unable to provide easy access and assistance to all victims. Thus, at national level there is a total number of 105 social services.³²⁶

The issue of preventing and combating domestic violence continues to concern the Romanian government. For this issue was elaborated the “National Strategy on promoting equal opportunities between women and men and preventing and combating domestic violence for 2018-2021” and “Operational Plan on implementing the national strategy on promoting equal opportunities for women and men and the prevention and combating of domestic violence 2018-2021”.

Causes of increase in domestic violence and violence against women and statistics on violence against women in Romania:

According to the Beijing Platform for Action adopted at the Fourth World Conference on Women's Issues in 1995, the term “violence against women” means any act of violence based on gender differences that results in or may result in harm or suffering, physical, sexual or psychological harassment of women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether in public or private life.³²⁷

Domestic violence has different characteristics if we compare with other forms of violence in other contexts. It occurs in the private environment, in the family and the victim and the aggressor are relatives. The severity of this social, community and public health phenomenon mainly affects women, “95% of all victims of domestic violence being women.”³²⁸

As the 2006 United Nations Report shows, the domestic violence is a universal phenomenon to which no country is immune. The phenomenon of family violence is a major social problem, which has an impact on all age groups, regardless of the social status of the parties involved. At the social level, several factors are identified which generate the development of this discriminatory antisocial phenomenon and affecting the full

³²⁶ <https://anes.gov.ro>

³²⁷ United Nations Department of Public Information, Fourth World Conference on Women's Issues, Beijing, China , 4-15 September 1995

³²⁸ Centrul Național de Evaluare și Promovare a Stării de Sănătate, Analiză de situație 2018:7





development of the society, threatening social safety, directly or indirectly, in a traumatic way.

Among the causes of the increase in domestic violence and against women, we can first talk about social learning. A person who grew up in an unfavorable environment, in a family where violence was common, where he was sometimes a victim or a spectator at scenes of violence, will much more quickly adopt an aggressive behavior. These families become hotbeds for the production and social spread of violence and aggression. Also, the fact that violence against women and children is accepted in some communities is becoming a factor that can cause an increasing of domestic violence. The emergence, spread and maintenance of the domestic and social violence is also favored by the educational deficiencies in the family environment and the deficiencies of the public education system. In our society we cannot neglect the role of the media as a factor of influence. Likewise, access to the virtual environment since childhood, makes online violence a behavior that is easy to copy. Of course, the socio-economic context, financial deprivation or the incidence rate of psychological and social disorders can increase domestic violence and therefore can have serious socio-human consequences.

Other causes of the increasing in domestic violence that should be mentioned would be the lack of legislation to identify, prevent and combat violence in any form. The high level of domestic violence as national and international phenomenon is supported by countless studies, surveys and statistics that present a variety of figures and results, providing a precise framework on this social issue.

Next we will refer to some statistics about violence against women in Europe and Romania.

The National Centre for Health Assessment and Promotion in Romania in a research - Situation Analysis 2015 presented centrally the following statistical data.

World statistical data:

- at least, one from three women has been beaten, forced to have sex or abused in their life, according with research based on 50 surveys around the world;
- one from fifth of women report being sexually abused before the age of 15;
- violence against women kills more women than road accidents and malaria together, according to World Bank estimates;
- almost 70% of victims, were killed by their life partners, according with the World Health Organization;





- the percentage of women in developing countries who are victims of violence over time of pregnancy varies between 4% and 20%, according with the European Journal of Public Health;
- according with 48 surveys conducted by World Health Organization worldwide, between 10% and 69% of women reported being physically abused by their partner;
- systematic rape, used as a weapon of war, has affected millions of women and adolescents and infected them with HIV / AIDS;
- at least 60 million girls are “missing” from the population of several countries as a result of miscarriage or neglect;
- at least 130 million women have undergone genital mutilation; another 3 million are at risk each year of falling victim to this degrading and dangerous practice;
- “honor killings” kill thousands of women each year, especially in West Asia, North Africa and parts of South Asia.

Statistical data from Romania:

- one from three women stated that she was physically or verbally abused by her life partner, according with the Reproductive Health Study (2004);
- in the first five months of 2008, there were 21.3% more rapes followed by the death of the victim compared to the similar period of 2007, over 50% of them in rural areas, according with the Romanian Police;
- domestic violence is mainly directed against women: in 2006 from a total of 9372 victims, 5160 were women, and in 2007 from a total of 8787 victims, 5794 were women and 69 women died due to domestic violence only in 2006 and 69 in 2007, the trend being increasing according with data provided by the Romanian National Authority for the protection of the Family and the Rights of the Child;
- a national survey launched in 2003 by the Equality Partnership Center showed that: 827.000 women frequently experienced domestic violence in various forms, 739.000 women were insulted, threatened or humiliated, more than 320 women were physically abused and a similar number suffered abuses that caused the forced restriction of social relations, over 70.000 women were abused in multiple forms, including sexual abuse.³²⁹

According with the statistical data of the General Inspectorate of the Romanian Police in 2019, were a number of 44.094 criminal acts reported for domestic violence crimes, of which 7986 protection orders was elaborate by police officers.³³⁰

³²⁹ Centrul Național de Evaluare și Promovare a Stării de Sănătate - Analiză de situație 2015, 2016:10

³³⁰ <https://politiaromana.ro/ro/utile/statistici-evaluari/evaluari>





A relevant indicator for the situation of domestic violence in Romania is the number of defendants prosecuted in cases concerning facts related with the domestic violence. According with the Activity Report from 2016 by the Public Ministry the situation about domestic violence is following: “In 2016, a number of 1467 defendants were sent to the court, from total number: 191 for murder, 487 for hitting or other violence, 33 for bodily injury, 13 for fatal blows, 20 for ill-treatment of a minor, 1 for harm to the fetus, 13 for unlawful deprivation of liberty, 80 for rape, 8 for sexual assault, 47 for sexual acts with a minor, 3 for sexual corruption of minors, 566 for abandonment of the family and 5 for non-compliance with measures on the custody of the minor, a number of 1822 victims of domestic violence, of which 932 are minors.”³³¹

The European Union Agency for Fundamental Rights (FRA) published in March 2014 the results of the largest study in the world on violence against women, signaling the extent of abuse suffered by women at home, at work, in public, but also online . The study was based on interviews with 42.000 women in the 28 EU member states. In the survey, women were asked about the experiences of physical, sexual and psychological domestic violence that they experienced as children and as a couple, pointing to a form of widespread abuse that affects the lives of many women. According with the study, most women who admit to being affected by physical and sexual violence are in countries such as Finland, Denmark and Latvia. In Romania, according to this study, 30% of women interviewed say they have been affected by physical or sexual violence at some point in their lives after the age of 15, within the European average. On average in Europe 55% of women experienced some form of sexual harassment, in Romania only 11% of respondents admitted that they had suffered sexual harassment. Regarding the experience of violence in childhood, a percentage of 24% of women in Romania say that they have been subjected to physical or sexual violence by an adult before the age of 15. Regarding stalking, often associated with partner separation, the European average is 18%, while in Romania 8% of respondents said they had undergone this treatment. Psychological violence affects between 30 and 39% of women. The average address in the EU countries to the police and support services at European level is 33%.

You can read more statistics by accessing the following links:

<https://insp.gov.ro/sites/cnepss/wp-content/uploads/2018/11/Analiza-de-situatie-Violenta-2018.pdf>

³³¹ http://www.mpublic.ro/sites/default/files/PDF/raport_activitate_2016.pdf





<http://fra.europa.eu/en/publication/2014/violence-against-women-eu-wide-survey-main-results-report>

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5.2. Human Trafficking

Author: Orest Dan Nicolau

Introduction:

What is human trafficking?

“The recruitment, transportation, transfer, harboring or reception of persons, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or





benefits to achieve the consent of a person having control over another person, for the purpose of exploitation.”³³²

Human trafficking is a serious crime that abuses people’s fundamental rights and dignity. It involves the criminal exploitation of vulnerable people for the sole purpose of economic gain.

Human trafficking is a modern form of slavery. It is often transnational in character and its victims are of both genders and all ages.³³³

A short look into the history...

A brief look at the past: some people have always considered themselves superior to others for various reasons such as race, sex, social status, religion, blood, etc. Slavery flourished in the past around the 1400s, when the Portuguese began the transatlantic trade with slaves brought from Africa. The English also joined the slave trade about 100 years after the Portuguese. A little later around the 1600s followed the Americans, the Dutch, the French, the Swedes and the Danes.³³⁴

The business was very profitable and therefore tolerated by the governments of the countries involved. In 1641, the British colony of Massachusetts was the first to legalize slavery.³³⁵

Around the 1700s, the transatlantic slave trade became illegal. Also at that time, trafficking in human beings for sexual reasons was recognized and called “white slavery”. According to Kristina Kangaspunta (United Nations Office on Drugs and Crime), 'white slavery' is obtaining a white woman or girl - by the use of force, drugs, or by dishonesty - for sex which is unwanted by the woman or girl.³³⁶ In 1793, The Parliament of Upper Canada in British North America (modern-day Canada) issued the “Act against the slavery” that abolished both slavery and the slave trade. In 1807, the Parliament of United Kingdom issued “The Slave Trade Act” prohibiting the slave trade in the British Empire. On September 22, 1862, Lincoln³³⁷ issued a preliminary emancipation proclamation, and on January 1, 1863, he made it official that “slaves within any State, or designated part of a State...in rebellion, shall be then, thenceforward, and forever free.”³³⁸ It took two more years and with the passage of “The 13th Amendment”³³⁹, adopted on December 18, 1865, the slavery officially abolished.

³³²Article 2, Paragraph 1 - Directive 2011/36/EU

³³³<https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings>

³³⁴<https://prezi.com/vpro1wh2ftoz/timeline-of-human-trafficking/>

³³⁵<https://sites.google.com/site/humantraffickingandpreventions/tasks>

³³⁶<https://sexualexploitatio.weebly.com/history-of-human-trafficking.html>

³³⁷https://en.wikipedia.org/wiki/Abraham_Lincoln

³³⁸https://www.history.com/topics/black-history/slavery#section_2

³³⁹<https://www.history.com/topics/black-history/thirteenth-amendment>





In 1921, International Convention for the Suppression of the Traffic in Women and Children was concluded and adopted under the auspices of the newly established League of Nations.³⁴⁰

For more information on abolition of slavery, there is an interesting timeline: https://en.wikipedia.org/wiki/Timeline_of_abolition_of_slavery_and_serfdom

Although slavery is now abolished de jure in all countries, de facto practices akin to it continue today in many places throughout the world.³⁴¹

Types of human trafficking:

Trafficking can take various forms and may involve:

- sexual exploitation, including prostitution;
- forced labor or services;
- slavery, servitude and related practices;
- the removal of vital organs.³⁴²

-child soldiers (In 2000, it was estimated that 13 million children were displaced because of warring conflicts. During the civil war in Sierra Leone, more than one million children were displaced, and 25,000 children (some as young as eight years old) were abducted and forced to become members of armed groups.³⁴³),

Trafficking can also take the form of exploitation for the purpose of forced criminality, such as pickpocketing, shoplifting and drug trafficking.³⁴⁴

The victims:

The victims are most often society's vulnerable.³⁴⁵ Globalization has increased living standards in developed countries, and this situation is accompanied by growing inequality both globally and nationally. This has led to a reduction in barriers to the movement of goods and capital and people worldwide.

Trafficking in human beings differs depending on the region, the person trafficked, the areas of origin and the destination.

Anyone can become a victim of human trafficking, regardless of nationality, ethnicity, age, gender or socio-economic status. However, there are some populations that

³⁴⁰https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-united-nations/1921-international-convention_en

³⁴¹https://en.wikipedia.org/wiki/Timeline_of_abolition_of_slavery_and_serfdom

³⁴²<https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings>

³⁴³https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1020341

³⁴⁴<https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings>

³⁴⁵<https://euobserver.com/justice/119118>





are more vulnerable to being targeted by traffickers and being caught in exploitative situations.

A person's vulnerability to being trafficked and exploited can be described using a set of connected terms known as push and pull factors. These factors are predicted on the universal desire for people everywhere to have a better life for themselves and their loved ones.

Human Trafficking and Prison Systems:

Push Factors are forces that drive people away from a particular place or situation.

Such as:

- Extreme Poverty
- Unemployment
- Lack of Education
- Inadequate Social Programs
- Gender-Based Inequality
- War & Conflict Situations

Pull Factors are forces that drive people towards a new location, in hopes of finding better opportunities and a better life. Such as:

- Globalization
- Free-Market Economy
- Demand for Cheap Labor, Goods & Services
- Commercialization and Commodification of Sex³⁴⁶

The traffickers:

Addressing a special committee on crime at the European Parliament on Tuesday (19 February), the EU's anti-trafficking coordinator Myria Vassiliadou told euro-deputies "those capable of controlling the entire trafficking process, including high end corruption and money laundering" are behind human trafficking.³⁴⁷

According to the TRACE (Trafficking as A Criminal Enterprise) project,³⁴⁸ the traffickers are predominantly men between the ages of minor and up to 70+. Nationality and cultural background differ depending on the country. For example: in Romania and Bulgaria, traffickers come from within the country and especially from the Roma community. In the Netherlands, there is a greater diversity, both nationalities and cultures, so traffickers here come from inside the country, but also from Turkey, Morocco, the Antilles, Suriname and other Eastern European countries.

³⁴⁶<http://www.kristenfrenchcacr.org/human-trafficking/who-are-the-victims/>

³⁴⁷<https://euobserver.com/justice/119118>

³⁴⁸https://ec.europa.eu/anti-trafficking/eu-projects-and-funding/trafficking-criminal-enterprise-trace_en





Also most are either married or in a relationship, sometimes wives practice or engage in prostitution, or sometimes they are aware of the situation but do not play an active role, or barely suspect anything.

Traffickers generally have a low level of education, but although they lack education, they have street smart and are aware of the various laws. The unemployment rate is quite high among traffickers, although they consider their occupation to be a real business. Almost half of them have criminal records, and the crimes committed are of a violent nature: robberies, rapes, possession and use of weapons, etc.

The way children are raised influences their development in life. Domestic violence, lack of education, unstable family climate, lack of parental affection, poverty, the presence of criminal elements in the family can be determining factors for a person to cross the other side of the law.

The social networks they come from are also closely linked to crime. Human trafficking is a crime not easily performed alone. An interesting difference in traffickers personality was found between the way they describe themselves and the way were described by the victims.

Traffickers according to their victims: inhumane, arrogant, street-smart, manipulative, ruthless, selfish, intimidating, aggressive, strong sexual drive, charming, sociable, addicted to power etc.

Traffickers as they see themselves: honest, fair, communicative, positive, a good man, helpful, respectful, trustworthy, intelligent, sense of humor, a man of principle, strict and orderly etc.³⁴⁹

Michel Foucault³⁵⁰ said that human behavior is scheduled and programmed through rationality and even in the most violent criminals, there is rationality. What is most dangerous in violence is its rationality.

The law

In Romania, human trafficking it is criminalized in The New Criminal Code³⁵¹ at chapter VII, articles 209 - 217: Trafficking and exploitation of vulnerable persons.

Article 209 – Slavery

Article 210 - Trafficking in human beings

Article 211 - Trafficking in minors

Article 212 - Submission to forced or compulsory labor

Article 213 - Pimping

³⁴⁹Trafficking as A Criminal Enterprise, Grant Project nr: 607669, Reports on the features and incentives of traffickers and on social interactions among them, pages 6 - 9

³⁵⁰https://en.wikipedia.org/wiki/Michel_Foucault

³⁵¹Law 187/2012 - for the implementation of Law no. 286/2009 on the Criminal Code of October 24, 2012, Official Gazette 757/2012;





Article 214 - Exploitation of begging

Article 215 - Using a minor for begging

Article 216 - Using the services of an exploited person

The sanctions applied are prison sentences such as: Slavery (3 – 10 years), Trafficking in human beings (3 – 12 years), Trafficking in minors (3 – 12 years), Submission to forced or compulsory labor (1 – 3 years), Pimping (2 – 10 years and if the deeds are committed against a minor, the special limits of the punishment shall be increased by half, etc.

In the fight against human trafficking, Romania established the National Agency against Trafficking in Human Beings (ANITP)³⁵².

The report of the national agency regarding the human trafficking for the first semester in 2020³⁵³:

-female victims' number is higher than those for male victims, for both age categories;

-60.6% of the victims have at most high school education, 28.8% have high school education, 6.6% are without education, 2.6% have vocational education and 1.3% higher education;

-182 victims come from two-parent families, 66 come from single-parent families, and 54 without family support, institutionalized, adopted, abandoned;

-the sexual exploitation one is the most frequent followed by labor exploitation;

Domestic traffic remains in the first place as an exploitation destination, 56% of the victims being exploited in Romania while The United Kingdom and Germany remain the main destinations for external traffic (25.2%).

In order to be as efficient as possible, nowadays-international cooperation is needed. The National Agency against Trafficking in Human Beings collaborates with a number of international bodies from both the official and private spheres:

- Organization for Security and Co-operation in Europe - OSCE
- OSCE Office for Democratic Institutions and Human Rights - ODIHR
- United Nations Office on Drugs and Crime - UNODC
- International Center for Migration Policy Development - ICMPD
- Council of Europe - CoE
- South East European Law Enforcement Center - SELEC
- European Police Office - EUROPOL
- European Border Police and Coast Guard Agency - FRONTEX

³⁵²<https://anitp.mai.gov.ro/>

³⁵³SHORT ANALYSIS OF HUMAN TRAFFICKING IN THE FIRST SEMESTER 2020 Posted on October 13, 2020, Updated on October 13, 2020 by Daniel Chera - <https://anitp.mai.gov.ro/>





- European Union Law Enforcement Training Agency - CEPOL
- European Crime Prevention Network - EUCPN
- International Organization for Migration - IOM
- Syracuse International Institute for Criminal Justice and Human Rights
- International Mission for Justice - IJM
- Terre des Hommes - <https://www.terredeshommes.org/>
- Off the Street - <https://horslarue.org/>
- RUHAMA - <https://www.ruhama.ie/>
- Konrad Adenauer Foundation - <https://www.kas.de/en/english>
- La Strada International - <http://lastradainternational.org/>
- Migrant Help - <https://www.migranthelpuk.org/>
- World Vision - <https://www.worldvision.org/>

And much more...

Prison and justice:

The way society sees prisons and detainees is influenced by several factors: media, internet, politics, acquaintances, friends, etc. The first two have the greatest influence and public opinion is very easy to shape.

The penitentiary system has developed a lot, and nowadays the punishment is no longer corporal, currently the punishment has the following functions: the function of preventing the commission of other crimes, the function of coercion and the function of re-education through which the formation of attitudes towards social values.

The process of rehabilitating a detainee is not perfect and the system is struggling between human rights and underfunding, especially in less developed countries. Prison work is not easy, and employees face daily problems created by conditions and detainees and to this entire are added the problems of everyday life.

On the other hand, detainees are deprived of their liberty, their rights are restricted, they can no longer help their families and they no longer have total control over their lives. They live with other criminal elements of society and must follow a daily schedule.

Discrimination occurs constantly with and without intention both on the part of employees and between detainees. The nature of the crime can also create problems for the detainee. A pedophile, for example, is not well seen by other detainees, and they can easily create problems for him. When the detention rooms close, their law appears, and on their law, they are among the worst seen. Given that guardians are also parents, it is not easy for them to work with such people. Yet they do it, and they perform their duties very well. However, exceptions to the rules still occur and hence the discrimination of some against others.

English ex criminal, Marc Lerigo spent a total of 11 years in prison:





“...as in society as a whole there is a pecking order also in our prisons. At the bottom, you have your nonces (Not of Normal Criminal Expedient), sex offenders and yes, they have a pecking order.

I have never committed a nonce crime so I can't tell you what that may be exactly in ranking but I should imagine the lower the age of the victim, lower down the rung of the ladder the paedo they'll be. With offences against babies being the worst up to say a peeping tom at the almost normal crime rung not thought of so bad...

... indeed the prison service and the police in England who also afford zero respect to these scumbags came up with the acronym NONCE.

...Same as guys who batter their wives or girlfriends up, hurt their kids, hurt the elderly, guys who hurt animals well Definitely they'll get their head kicked in at some point if they're on normal location is not on rule 43 protection or the numbers wing, in fact there just about scraped in here when really hurting any of these people groups and you are going to be in a constant fight, and only rightly so.

*Respect is zero.*³⁵⁴

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	https://sites.google.com/site/humantraffickingandpreventions/tasks available on 07.02.2021

³⁵⁴<https://www.quora.com/What-crimes-earn-you-the-most-respect-in-prison>





<p>https://sexualexploitatio.weebly.com/history-of-human-trafficking.html available on 07.02.2021</p>
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<p>https://www.history.com/topics/black-history/thirteenth-amendment available on 07.02.2021</p>
<p>https://ec.europa.eu/anti-trafficking/legislation-and-case-law-international-legislation-united-nations/1921-international-convention_en available on 07.02.2021</p>
<p>https://en.wikipedia.org/wiki/Timeline_of_abolition_of_slavery_and_serfdom available on 07.02.2021</p>
<p>https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings available on 10.02.2021</p>
<p>https://papers.ssrn.com/sol3/papers.cfm?abstract_id=1020341 available on 10.02.2021</p>
<p>https://www.europol.europa.eu/crime-areas-and-trends/crime-areas/trafficking-in-human-beings available on 10.02.2021</p>
<p>https://euobserver.com/justice/119118 available on 10.02.2021</p>
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<p>https://anitp.mai.gov.ro/ available on 07.02.2021</p>
<p>SHORT ANALYSIS OF HUMAN TRAFFICKING IN THE FIRST SEMESTER 2020 Posted on October 13, 2020, Updated on October 13, 2020 by Daniel Chera - https://anitp.mai.gov.ro/analiza-succinta-privind-traficul-de-persoane-in-semestrul-i-2020/ available on 07.02.2021</p>
<p>https://www.quora.com/What-crimes-earn-you-the-most-respect-in-prison available on 11.02.2021</p>





5.3. Crimes against sexual freedom and the risk of discrimination

Author: Despina Larisa Guleş

According to the New Penal Code from 2009, chapter VIII, entitled *Crimes against sexual freedom and integrity*, in the Romanian legislation are framed six types of crimes: art. 218 Rape, art. 219 Sexual aggression, art. 220 Sexual act with a minor, art. 221 Sexual corruption of minors, art. 222 Recruitment of minors for sexual means and art. 223 Sexual harassment.

The convicts whom, through the nature of their crimes, fit in chapter VIII represents a certain type of convicts in the penitentiary. Depending on the level of cognitive development, social intelligence and the living environment, they can meet certain problems in the process of integrating in the group of the cell. They can represent a category of vulnerable convicts, with the risk of being abused by the room mates, forced to do house hold tasks just for the amusing of others (ex: washing the underwear, the toilet). If they don't represent risk of being abused, most of the time they represent the risk of being discriminated and named different names by the others inmates. Amongst the convicts, in a big it largely counts the nature of the crime for the status obtained in the penitentiary. The crimes that fit in the chapter VIII, represents in most of the cases, the lowest category of inmates, which impose all most no respect from other convicts, the category with the highest risk of being abused or discriminated by other convicts.

For a better understanding of the dynamics inside of a totalitarian institution, like the penitentiary, forwards we will present the most important aspects of a life behind the bars.

According to Goffman, “a totalitarian institution can be defined such as a place of residence and work where a large number of like-situated, individuals, cut off from the wider society for an appreciable period of time, together lead an enclosed, formally administered round of life.”³⁵⁵ A clear example of a totalitarian institution is the penitentiary.

For a person who executes a custodial sentence, the penitentiary elevates two big problems: “of adaptation to the norms and values specifics of these types of life” and “of subsequent evolution of his personality”.³⁵⁶ (Gheorghe, 2001). At the persons who have to execute large punishments, and also at the recidivists, it can be observed “negative

³⁵⁵ Goffman, E., (2003). *Aziluri: eseuri despre situația socială a pacienților psihiatrici și a altor categorii de persoane instituționalizate*, Iași: Polirom.

³⁵⁶ Gheorghe, F., (2001). *Psihologie penitenciară: studii și cercetări*, București: Oscar Print;





reorganizations of personal values”,³⁵⁷ (Gheorghe, 2001), despite of all efforts deposited by the administration of the penitentiary, which it decreases their perceptiveness toward to the process of reintegration run in the penitentiary. In general, according to Gheorghe, for the convicts it may seem to be affected in large extent, the norms after that they lead their activities and their social relationships, the individual and collective appreciations of the everyday facts, which it reveals “an inferior system of needs, a report at the good and evil through their personal interests and, on the whole, a low level of morality”.³⁵⁸

According to Gheorghe, for any human, the privation of liberty in the penitentiary environment represents a particular situation, with “extensive echo in his living environment, both during his detention, and also after that, in the society.” As long as the persons are in the penitentiary, between humans that, like them, have committed crimes, the relationships are the ones that reveal the main difficulties. In relation to the other convicts, “remorse, declaratory accusations or even the sincere ones during the penal trial are quickly replaced with excuses for the acts committed, ‘fabricated’ in the penitentiary to which the person accedes because it gives exculpatory reasons”(Gheorghe, 2001). The conscience of the convict is relieved through the subjective decrease of guilt, and often, it appears an alteration of the position in relation to the crime committed: if initially he appreciates that the punishment is legitimate in relation to the crime, in short time he considers the punishment is too harsh. Thereby, from a submissive, passive behavior, the convict goes to an active behavior, in which the personal gain, self-preservation and selfish are on the first place. In the behavior plan, from the conformist morality, based on guilt, it goes to frustration morality, based on the group beliefs concerning crime cause, humans faith in the world, the position towards work, family, law and future and implicit the lifestyle in the penitentiary”.³⁵⁹ Even so, the moral values are not destroyed in the penitentiary, but they exist and they concretized like values in a particular environment. In detention, the person leads “his daily existence in the middle of a human collectivity characterized by behavior deflections, collectives who in many cases punish the ones who adopt a moral behavior.”

Even in this situation, “it must not be accepted the idea, that circulates both through those in detention, as well as from the outside of the penitentiary, that in an abnormal situation the human behaves abnormally: the human must use to maximum any

³⁵⁷ Gheorghe, F., (2001). Psihologiepenitenciară: studiișercetări, București: Oscar Print;

³⁵⁸ Gheorghe, F., (2001). Psihologiepenitenciară: studiișercetări, București: Oscar Print;

³⁵⁹ Gheorghe, F., (2001). Psihologiepenitenciară: studiișercetări, București: Oscar Print;





circumstance that can offer a furthermore chance to show himself moral, therefore human”³⁶⁰

Through the above, it suggests that exist two intellectual hypotheses through which we can approach the penitentiary environment: “first, the moralist one, who meditates at human condition, the second, the masterful one, who wants to understand and to rank.”³⁶¹

Most often it is easier to judge than to analyze and to think a situation because the process of thinking requires certain availability, while the stereotypes and the prejudice represent through definition an economy of time and resources. According to Lippman, stereotypes are “elements of social cognition, mental constructs which helps interpret the social reality”. These have a functional value as a quick means of interpretation of information. We could say that stereotypes represent impressions and mental schemes about certain group of persons, which the persons form by assigning the respective group a certain set of characteristics. According to Fiske, the stereotype it presents like a cognitive element, the prejudice as a affective element and the discrimination as a behavior element. Therefore, according to Chelcea, prejudice represents the opinions that the persons form a priori about a certain social group, without a careful analyze of it. Degenerating, it can be reach at manifestations of a hostile and discriminative behavior.

Our brain will always prefer the short way. Therefore, it is necessary for an availability to be careful, to understand in order to stop and analyze certain situations and certain types of humans, before our mind takes the shortcut.

According to Gheorghe, the educative possibilities of the ethic approach are conditioned in the penitentiary by factors of which action is hard to counteract. First of all, morality of the most of convicts reveals a contradiction between their moral conscience and their moral manifestations: they know what “good” is and the criteria by which it is appreciated, but the objective pursued, the means used and the time given to the realization do not fit in the limits that are socially accepted. Second of all, the penitentiary environment does not always allow an authentically moral exteriorization from the convicts. The interpersonal relationships that are established between them are strongly marked by the privation of freedom, by the affective and informational frustration. This makes that the interpersonal relationships between them to be determined by immediate material interests, which alter the moral ambience within the group of convicts. In these conditions, it hardly can be about the existence or the maintaining some exceptional attitudes of convicts for the rest of them, an attitude without a hint of discriminations. Being reduced in size and depth, interpersonal relationships descends to lower levels, and

³⁶⁰ Gheorghe, F., (2001). Psihologiepenitenciară: studiișercetări, București: Oscar Print;

³⁶¹ Gheorghe, F., (2001). Psihologiepenitenciară: studiișercetări, București: Oscar Print;





the communication between the convicts remains dependent on unmet needs and mood for the moment.

According to Chelcea, “the need of superiority of some individuals found in an inferior social position or socially threaten is sustained by the way they report at the groups that are considered vulnerable, around which the negative prejudice are focused”.³⁶² Therefore, within the community behind the walls, it can be observed discriminated behavior due to the nature of the crime; the most disadvantaged are the ones with crimes against sexual freedom and integrity. Even among the convicts with the crimes that fit in this category, it can be observed a discriminated behavior compared to those who had as a victim of their crime, a minor.

Thereby, the will to be moral gets the support only from the staff from prison, rarely from the other convicts. Being always interested of personal and materials aspects, it doesn't remain space for moral solutions to everyday problems. The will to obtain a material advantage is bigger than the will to be moral when the act itself is isn't motivated by de achievement of a favorable situation.

In the penitentiary environment, the thing that leads to the transformation of the mentality of the convicts is the need of reconstruction of a functional values system, in parallel with the activation of self-trust and trust in the future, with the correction of the attitude towards work, law and punishment. The faster the convicts understand that moral acts ensures them the acceptance from others, inner peace and the feeling of participation, the openness to process of attitudinal reconstruction is wider and more effective. Of course, education and the training play a big part in the process of moral reconstruction, but as long as the convicts don't blame their own lives and honestly don't want to changes, the efforts that come from outside will have no results.

According to Gheorghe, “the guardian that works in direct contact with the convicts has difficulties in the adjustment of his status, carefully detailed in the official regulations, and the roles that must be played in the relations with the convicts. On the background of a global relationship of guard-convict, everyday activity put him permanently in the face of unique situations, in which he must solve the personal problems of convicts, problems for which doesn't exist official prescriptions. Recognizing the precarious existence in the prison, the trend will be to a reasonable conciliation and help”.³⁶³

In the penitentiary, it exist different privileges from a status to another, but, usually, the statuses had outside of the prison tend to be maintained during the execution of the sentence. In this regard, the convicts with a particular value (superior training) will be kept

³⁶² Chelcea, S., (2010). Psihosociologie: teorii, cercetări, aplicații, ed. a 3-a , rev., Iași: Polirom;

³⁶³ Gheorghe, F., (2001). Psihologiepenitenciară: studiișercetări, București: Oscar Print;





at distance or even persecuted because they are a reason for humiliation for the majority, which fell inferior.

The penitentiary is in the same time a support of the social environment and a frontier of civilization, but in the wider social context these institution chronic remains after the social general environment. That’s why one of the criteria of theoretical approach of the penitentiary is it’s incapacity of being contemporaneous with the society in which it functions.

Concluding, according to Gheorghe (2001), it exists the tendency to treat the delinquent phenomenon as a problem, as a social matter, and the individuals end up being treated as some cases. These persons are among us, with us and it will be mandatory to take them as such, even if they go through the judiciary sector. If the phenomenon of rejection from the society is installed, the process of exclusion is urgent; those involved “remain enclosed in the behavior that singles them out”.³⁶⁴

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³⁶⁴ Gheorghe, F., (2001). Psihologiepenitenciară: studiișercetări, București: Oscar Print;





5.4. Police and work with sexual violence offenders and victims

Authors: Daiana Huber, Anca Popescu

General definition & Context – Sexual violence offenders

According to the Office for National Statistics, violent crime covers a large spectrum of criminal offences, from “minor assaults [such as pushing and shoving] that result in no physical harm, to serious incidents of wounding and homicide”.³⁶⁵ For the purpose of this section, we will focus on sexual violence, rape, assault and unlawful sexual activity against adults and children, under the umbrella of violent crimes.

In the specific context of bias and discrimination, sexual violence offenders are an important topic of discussion, as the stigma associated with such acts can provoke severe prejudice, discrimination, and maltreatment. If the larger population of offenders were to be used as a reference point, sexual offenders in particular are prone to receiving some of the most negative attention (both from the public and within a prison) due to “the heinous nature of their crimes, among other factors”.³⁶⁶ Furthermore, the correlation between prisoners on remand, long term imprisonment, additional charges for violent crimes and sexual offenses is significant.³⁶⁷

The perceptions we hold, the shortcuts we use to process information about, and the unconscious responses to sexual offenders need to be addressed, particularly in a corrections environment, as they allow us to understand what behaviours our responses can elicit, how they are internalised by the offenders themselves and the influence they have on rehabilitation, integration and societal re-entry, and recidivism.

Existing literature on the attitudes towards sexual offenders highlights that individuals who exhibit “higher dehumanising perceptions [of sexual offenders]” are more likely to support their societal exclusion upon release and less like to endorse rehabilitation

³⁶⁵ Office for National Statistics. (2016). Overview of violent crime and sexual offences.

³⁶⁶ Grossi, L. (2017). Sexual offenders, violent offenders, and community reentry. Aggression and violent behaviour .

³⁶⁷ Rabe, K. (2012). Prison structure, inmate mortality and suicide risk in Europe. International Journal of Law and Psychiatry .





efforts.³⁶⁸ The stigmatising labels associated with sexual offenders can also result in higher rates of violent victimisation reported by sexual offenders in prisons, experiences which have been found to contribute to re-offending risks.³⁶⁹

Aside from negative public perceptions, sexual offenders are obliged to deal with the consequences of their crime and the stigma attached to it during legal procedures, trials and long-term imprisonment, provoking feelings of antipathy in other individuals involved in the justice system, which places them at an increased risk of bullying, attacks, discrimination, and mistreatment.³⁷⁰

Interactions within the correctional community are often the first instances of direct stigmatisation and harassment experiences. These experiences are internalised by the offenders, resulting in a sense of shame, diminished self-esteem and worry in anticipation of “ongoing [including post-release] discriminatory interactions”, which can have detrimental effects on the treatment, rehabilitation, and re-entry processes.³⁷¹

Research in the field has also uncovered **externalised negative feelings** in incarcerated sex offenders, as a direct result of internalising the biases they are treated with.³⁷²

1. *being targeted for formal sanctions within the correctional environment (community notification, registration etc)*
2. *unfair treatment and labelling, both within the correctional environment as well as post-release*

These two main feelings are important because they are often externalised through “resentment of those applying the labels”.³⁷³ Amongst the most common characteristics that can be observed in sexual offenders and their perceptions of themselves, as a result of the treatment they receive and the stigma they internalise are:

³⁶⁸ Viki, T., Fullerton, I., Raggett, H., Tait, F., & Wiltshire, S. (2012). The role of Dehumanization in Attitudes Toward the Social Exclusion and Rehabilitation of Sexual Offenders. *Journal of Applied Social Psychology*, 2349-2367.

³⁶⁹ Abbiati, M., Mezzo, B., Waeny-Desponds, J., Minervini, J., Mormont, C., & Gravier, B. (2014). Victimization in Childhood of Male Sex Offenders: Relationship between Violence Experienced and Subsequent Offenses through Discourse Analysis. *Victims & Offenders*, 234-254.

³⁷⁰ Kimmett, E. (2005). Bullying, victimization and safer prisons. *Probation Journal*.

³⁷¹ Tewksbury, R. (2012). Stigmatization of Sex Offenders. *Deviant Behaviour*.

³⁷² Tewksbury, R. (2012). Stigmatization of Sex Offenders. *Deviant Behaviour*.

³⁷³ Tewksbury, R. (2012). Stigmatization of Sex Offenders. *Deviant Behaviour*.





- a. sense of being **treated unfairly**
- b. **victimisation language** and sense of being unjustly sanctioned
- c. frustration, disappointment, and a **sense of injustice**
- d. perception of the society applying the labels as “the offender” – **condemnation of the condemner approach**
- e. applying fault on the outside world as a **coping mechanism** to internalising stigma and biases

Such internalised feelings, whether valid or not, can impact the self-identification of prisoners, reducing their perceived value and hinders positive behavioural changes. Identifying these characteristics in the assessment of sexual offenders can aid reduce the unconscious bias of the assessor.³⁷⁴ If we consider stress, anxiety, and social marginalisation to be key factors in an offenders’ risk of recidivism, it becomes crucial to understand how such feelings, experiences and thoughts can be mitigated in a correctional environment.

General definition & Context – Sexual violence victims:

Despite sexual violence and assault having been defined at international, European, and national levels, and the particularities of the acts covered under the scope of rape differing amongst Member States, components of “consent” and “sexual intercourse” are included across all definitions. The Istanbul Convention outlines rape under the broader umbrella of sexual violence, covering all sexual acts that lack consent, including “causing another person to engage in non-consensual acts of a sexual nature with a third person”.³⁷⁵ The UN guidelines also include rape under the broader scope of sexual violence, following the same notions as the Istanbul Convention. Furthermore, the UN (2010a) highlights that violence against women (of which rape is understood as a component), is a “form of gender-based discrimination and a violation of human rights.”³⁷⁶

³⁷⁴ Tewksbury, R. (2012). Stigmatization of Sex Offenders. *Deviant Behaviour* .

³⁷⁵ Council of Europe. (2011). *Convention on preventing and combating violence against women and domestic violence*. Istanbul: Council of Europe Treaty Series.

³⁷⁶ European Institute for Gender Equality. (2017). *Glossary of definitions of rape, femicide and intimate partner violence*. Vilnius.





Reliable data on sexual violence in a prison setting is lacking, both at international as well as EU Member States level however, the results of the most comprehensive survey on sexual violence, harassment, and stalking, published in 2014 by the EU Agency for Fundamental Rights, provide a dramatic representation of the extent and nature of such crimes across the Union, and draw the attention towards beliefs and attitudes held with regards to the victims and survivors.³⁷⁷

In the specific context of bias and discrimination, sexual violence victims are an essential subject of discussion, as the stigma associated with them often stems from biases and myths, provoking prejudice, discrimination, secondary trauma, and inadequate support. **Rape myths** were originally defined in the 80s, using a combination of social psychology approaches, framing the concept as a set of “*attitudes and beliefs that are generally false but widely and presently held, [which] serve to justify male aggression against women*”.³⁷⁸ These views are often “*prejudicial, stereotyped, or false beliefs about rape, rape victims and rapists*” Parratt & Pina, conceptualising males as perpetrators, and females as victims, implicitly rejecting the possibility of males also being targets of sexual violence.³⁷⁹

The acceptance of and unconscious reliance on rape myths has been shown to directly impact individual understandings of sexual assault, and the consequent treatment of its survivors, both within the broader community as well as within law enforcement and correctional systems, by influencing what constitutes as *legitimate rape* and a *credible victim*.³⁸⁰ For the specific purpose of this training material, we will address the influence rape myths have on professionals within the corrections environment, and how they affect:

- a. how victims of rape are **perceived**,
- b. how victims of rape are **responded to and treated**,
- c. how rape develops into a **culturally supported crime**,

Research, advocacy, and specialist literature in the field have addressed rape and sexual assault for decades, emphasising a “genuine shift in policing culture towards less

³⁷⁷ European Parliament. (2019). Violence against women in the EU.

³⁷⁸ Lonsway, K., & Fitzgerald, L. (1994). Rape Myths: In Review. *Psychology of Women Quarterly*.

³⁷⁹ Parratt, K., & Pina, A. (2017). From "real rape" to real justice: a systematic review of police officers' rape myth beliefs. *Aggression and violent behaviour*.

³⁸⁰ Venema, R. (2016). Making judgements: how blame mediates the influence of Rape Myth Acceptance in police response to sexual assault. *Journal of Interpersonal Violence*.





victim blaming”³⁸¹ however, active endorsement of rape myths and prejudices can still be observed in qualitative, open-ended examinations. Most importantly, high levels of secondary victimisation are still prevalent among victims who report a sexual assault to authorities.³⁸² With rape still largely a sensitive, often controversial topic, it is no surprise that attributions of responsibility are derived from implicit biases and perceptions about causality, impacting responders’ judgements of the control the victim had over the event and direction towards which blame will be casted.³⁸³

The most common factors that have been identified to influence responders’ beliefs and attitudes towards rape victims are:

Victim – Perpetrator relationship,³⁸⁴

Attire, intoxication, and risk-taking behavior,³⁸⁵

Gender of victim,³⁸⁶

Gender and ideology of responder,³⁸⁷

Stereotyped victim typology,³⁸⁸

The types of myths and biases around rape, rapists and rape victims are quite diverse and, given the ease with which they can influence attitudes towards sexual assault victims and the interactions correctional professionals have with them, overcoming and replacing these stereotypes requires conscious effort. The first step, as addressed

³⁸¹ Mennicke, A., Anderson, D., Oehme, K., & Kennedy, S. (2014). Law Enforcement Officers' Perception of Rape and Rape Victims. *Violence and Victims* .

³⁸² Venema, R. (2016). Making judgements: how blame mediates the influence of Rape Myth Acceptance in police response to sexual assault. *Journal of Interpersonal Violence*

³⁸³ Venema, R. (2016). Making judgements: how blame mediates the influence of Rape Myth Acceptance in police response to sexual assault. *Journal of Interpersonal Violence*.

³⁸⁴ Venema, R. (2016). Making judgements: how blame mediates the influence of Rape Myth Acceptance in police response to sexual assault. *Journal of Interpersonal Violence*.

³⁸⁵ Sleath, E., & Bull, R. (2012). Comparing Rape Victim and Perpetrator Blaming in a Police Officer Sample. *Criminal Justice and Behavior* .

³⁸⁶ Sleath, E., & Bull, R. (2012). Comparing Rape Victim and Perpetrator Blaming in a Police Officer Sample. *Criminal Justice and Behavior* .

³⁸⁷ Parratt, K., & Pina, A. (2017). From "real rape" to real justice: a systematic review of pilice officers' rape myth beliefs. *Aggression and violent behaviour* .

³⁸⁸ Parratt, K., & Pina, A. (2017). From "real rape" to real justice: a systematic review of pilice officers' rape myth beliefs. *Aggression and violent behaviour* .





previously, involves active retrospection and acknowledgment of the root cause of the bias, which can either be one or a combination of:

- Unconscious rape myth acceptance
- Implicit attributions of blame
- Extra-legal crime characteristics
- Criminal justice peer culture

Awareness of our own biases, stereotypes, and prejudices, as well as the ones employed by those around us can aid the development of adequate training and the consequent peer culture shift regarding sexual assault, determining appropriate responses that do not rely on flawed judgements and cultural definitions of what constitutes *real* rape and *credible* victims.³⁸⁹ This can, in turn, support the experiences of victims, impact attrition rates in rape cases and reduce the risk of PTSD, shame and self-blame,³⁹⁰ indirectly improving the legitimacy of the correctional setting. Furthermore, reducing implicit biases related to rape and acknowledging the risk victims face surrounding their credibility can create an environment of trust and transparency, reducing victim withdrawal, as victims who feel contented with their responding professional are also more likely to divulge sensitive details.³⁹¹

EU/International standards and practice:

The past decade has been marked by numerous important improvements in the quality of the criminal justice systems. In an attempt to improve conviction rates and respond to victims of rape adequately, extensive training has been provided across EU institutions. However, secondary victimisation and trauma are still observable in survivors who are exposed to ill-informed, insensitive, and victim-blaming processes.³⁹²

³⁸⁹ Turgoose, D., Glover, N., Barker, C., & Maddox, L. (2017). Empathy, compassion fatigue an burnout in police officers working with rape victims. *Traumatology* .

³⁹⁰ La Bash & Papa, 2014; Lee, Scragg & Turner, 2001

³⁹¹ Turgoose, D., Glover, N., Barker, C., & Maddox, L. (2017). Empathy, compassion fatigue an burnout in police officers working with rape victims. *Traumatology* .

³⁹² Venema, R. (2016). Making judgements: how blame mediates the influence of Rape Myth Acceptance in police response to sexual assault. *Journal of Interpersonal Violence* .





Amongst other initiatives developed in the fight against violence, the UN resolution 15/2010 (2010) adopted guidelines and Practical Measures on the Elimination of Violence Against Women in the Field of Crime Prevention and Criminal Justice. As can be observed in the statement of the Directorate General,³⁹³ these guidelines highlight the need for crime prevention responses to be victim-centric, as such initiatives have been shown to be greatly impactful in:

- ➔ retaining victim engagement in the CJS process,³⁹⁴
- ➔ enabling the collecting of more robust evidence,³⁹⁵
- ➔ making victim more credible witnesses in court,³⁹⁶

Furthermore, the use of specialised, bias-free advocates to support victim through criminal justice systems has been found to reduce secondary victimisation. Raitt (2010) emphasises that the provision of independent legal representatives for rape victims is “the most effective way of supporting rape victims during trials”, while Skinner and Taylor (2009) note that this is a widespread but not universal practice in the European Union.³⁹⁷

Specialist advocate support networks for victims and survivors of sexual assaults have been established in at least 14 EU countries, including Austria, Belgium, Denmark, France, Germany, Ireland, with activities ranging from legal representation at trials to more general CJS support.³⁹⁸

³⁹³ Directorate General for Internal Policies. (2013). Overview of the worldwide best practices for rape prevention and for assisting women victims of rape. Policy Department C: Citizens' rights and constitutional affairs.

³⁹⁴ Skinner and Taylor, 2009

³⁹⁵ Brooks, O., & Burman, M. (2016). Reporting rape: victim perspectives on advocacy support in the criminal justice process. *Criminology & Criminal Justice*

³⁹⁶ Brooks, O., & Burman, M. (2016). Reporting rape: victim perspectives on advocacy support in the criminal justice process. *Criminology & Criminal Justice*

³⁹⁷ Directorate General for Internal Policies. (2013). Overview of the worldwide best practices for rape prevention and for assisting women victims of rape. Policy Department C: Citizens' rights and constitutional affairs.

³⁹⁸ Directorate General for Internal Policies. (2013). Overview of the worldwide best practices for rape prevention and for assisting women victims of rape. Policy Department C: Citizens' rights and constitutional affairs.





Why is this relevant?

As “gateways to justice”, correctional officers can be influenced by past experiences and knowledge, indirectly influencing the response to and treatment of sexual violence victims and offenders, making their role crucial.³⁹⁹ Interactions with offenders and victims of sexual violence have the potential to influence not only the individuals, but also the correctional community’s attitudes and behaviours.

First and foremost, there is an inherent need to acknowledge that “discrimination, stigma and exclusion may subsequently place an offender at an increased risk for recidivism”.⁴⁰⁰ From a structural perspective, the collective support (or lack thereof) of the correctional staff has the capacity to yield a strong influence on the progress, development, and potential rehabilitation of offenders. Understanding the common perceptions of sexual offenders and adjusting staff behaviour accordingly can aid the treatment of violent offenders, and indirectly increase trust, authority, and legitimacy.⁴⁰¹

In the specific context of dealings with sexual violence victims, correctional staff are exposed to severely traumatic information so acknowledging, understanding, and overcoming implicit biases is crucial to developing a safe working environment.⁴⁰²

From a pragmatic viewpoint, discriminatory and hostile beliefs, paired with a direct or indirect refusal to actively support sexual offenders overcome the internalised stigma, work towards positive behavioural changes, and eventually re-enter and establish themselves within the community can result in increased levels of risk, both within the prison, as well as outside it.⁴⁰³

The second important consideration is the correctional staff’s role as active risk-assessors. Bias free risk-assessment is crucial as it can increase compliance and

³⁹⁹ Venema, R. (2016). Making judgements: how blame mediates the influence of rape myth acceptance in police response to sexual assault. *Journal of Interpersonal Violence* .

⁴⁰⁰ Winnick & Bodkin, 2008

⁴⁰¹ Grossi, L. (2017). Sexual offenders, violent offenders, and community reentry. *Aggression and violent behaviour* .

⁴⁰² Turgoose, D., Glover, N., Barker, C., & Maddox, L. (2017). Empathy, compassion fatigue an burnout in police officers working with rape victims. *Traumatology* .

⁴⁰³ Willis, G., Levenson, J., & Ward, T. (2010). Desistance and Attitudes Towards Sex Offenders: Facilitation or Hindrance. *Journal of family violence* .





cooperation through legitimacy, which is ethically more desirable, more cost-effective and with long-term results compared to “systems maintained down the barrel of a gun”.⁴⁰⁴

Thirdly, considerations towards the emotional impact of working with sexual violence offenders and victims must not be overlooked. Recent research highlights that long-serving specialist officers suffer from compassion fatigue, secondary traumatic stress, and burnout, as a result of consistent engagement with traumatic information.⁴⁰⁵ These emotional factors can impede the ability of correctional staff to feel and display empathy, indirectly influencing the victim’s experiences of the justice system and decision-making processes.⁴⁰⁶

Last but not least, staff who are most effective within a correctional setting operate, as much as possible, within the professional box, bringing along a set of skills, accurate and positive beliefs in their ability to use their skills to create an environment where best outcomes are produced – whether that is legitimacy, rehabilitation, or *peaceful* correctional communities. Perceived unfair or overly restrictive sanctions can push prisoners to stick to something they can control, making positive behavioural changes difficult to achieve, ultimately increasing the difficulty of correctional staff’s working environment.

Because correctional staff also have pre-conceived ideas and attitudes that may influence their beliefs of rape, training or experience alone may not be sufficient in order to reduce bias and prejudice. Specifically, training can address negative beliefs of rape and suggest good standards of practice for rape investigations. However, if other factors that may influence officers, such as their gender, ethnicity, and age are not addressed in training, it can be argued that knowledge alone may well not induce attitude or behaviour change.⁴⁰⁷

⁴⁰⁴ Jackson, J., Tyler, T., Bradford, B., Taylor, D., & Shiner, M. (2010). Legitimacy and procedural justice in prisons. *Prison service journal* .

⁴⁰⁵ Turgoose, D., Glover, N., Barker, C., & Maddox, L. (2017). Empathy, compassion fatigue and burnout in police officers working with rape victims. *Traumatology* .

⁴⁰⁶ Turgoose, D., Glover, N., Barker, C., & Maddox, L. (2017). Empathy, compassion fatigue and burnout in police officers working with rape victims. *Traumatology* .

⁴⁰⁷ Parratt, K., & Pina, A. (2017). From "real rape" to real justice: a systematic review of police officers' rape myth beliefs. *Aggression and violent behaviour* .





Further reading:	<p>Handbook on gender-responsive police services for women and girls subject to violence Digital library: Publications UN Women – Headquarters</p> <p>Working with sexual violence victims in prisons (pcar.org)</p> <p>Violence And Sexual Assault In Prison Prisoner Resources</p> <p>Prison Rape Elimination Act PREA (prearesourcecenter.org)</p> <p>Overview of the worldwide best practices for rape prevention and for assisting women victims of rape (europa.eu)</p> <p>CETS 210 - Explanatory Report to the Council of Europe Convention on preventing and combating violence against women and domestic violence (coe.int)</p> <p>Supporting women and girls (endviolenceagainstwomen.org.uk)</p> <p>General recommendations made by the Committee on the Elimination of Discrimination against Women (un.org)</p> <p>Rape Culture, Victim Blaming, and the Role of Media in the Criminal Justice System (eku.edu)</p> <p>Violence against women in the EU (europa.eu)</p> <p>Legislative Approaches To Rape In The EU: Outlining Case Study Examples – GenPol (gen-pol.org)</p> <p>Understanding rape in prison low_res.pdf (pcar.org)</p> <p>Introduction Notes for Trainers ROH V4.36 (nomsintranet.org.uk)</p>
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5.5. Provoking national, racial, and religious hatred

General definition

National, racial, and religious differences are an important topic of consideration in prison systems across the world, particularly in the context of increasing international migration trends, globalised crime and multiculturalism trends. The discrimination that can arise from such a population variety has been extensively documented and its definitions have been amended to accommodate the different States’ needs, as well as to address issues of differential treatment, bias, and prejudice.

Discrimination on the grounds of national, racial, and religious differences is covered under Article 14 of the European Convention on Human Rights,⁴⁰⁸ highlighting that the rights conveyed under the Convention “shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status.” Both Article 14 of the Convention and Article 1 of Protocol No. 12 “prohibit discrimination on a large number of grounds [...] and the non-exhaustive list of grounds of discrimination allows the Court to extend and include grounds not expressly mentioned therein.” In order

⁴⁰⁸ Council of Europe. (1950). Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14. Council of Europe.





to provide a clearer picture of the context addressed, and for the purpose of this training material, we will highlight the three main forms of discrimination covered by the general prohibition to discriminate protocols *General*, that can arise from national, racial, or religious belonging:⁴⁰⁹

- **Direct Discrimination,**
- **Indirect Discrimination,**
- **Discrimination by Association ,**
- **Instruction to Discriminate.**

Despite a clear definition of what would constitute *direct discrimination* not being covered under Article 14 or Article 1, the phrase has been used to address the disparity in the treatment of or behaviour towards persons in comparable or similar circumstances, based on status or identifiable group characteristics. Furthermore, *direct discrimination* can also cover acts of harassment and incitement to discrimination and hatred and is primarily characterised by explicit intent.

Covering a wider spectrum of behaviours, *indirect discrimination* can take many forms, including but not limited to “disproportionately prejudicial effects of a general policy or measure which, though phrased in neutral terms, has a discriminatory effect on a particular group”. Considering it does not always require intent but can incite significant disadvantage, an increased focus should be given to this form of discrimination, as it can stem from both neutral stances, as well as *de facto* situations, despite the policies and measures not being explicitly directed towards a certain group.

Discrimination by association refers to situations in which the behaviour towards or treatment of persons differs based on presumed affiliation with other individuals who “actually or seemingly possess a particular status or protected characteristics”, resulting in less favourable treatment, discrimination, and victimisation on the basis of assumed group membership alone, lacking any legitimate aim or reasonable justification.

Last but not least, *harassment and instruction to discriminate* refers to unwarranted behaviours towards a group or individual, with the sole purpose of violating the dignity and rights of that individual, by creating a hostile, degrading, offensive or intimidating

⁴⁰⁹ Council of Europe. (1950). CONvention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14. Council of Europe.





environment. This prohibition has been added to the EU non-discrimination laws fairly recently, to allow for harmful nuances of discrimination to be considered.

Most importantly, International Human Rights Law does not only address direct/indirect discrimination and discrimination by association, but it also explicitly prohibits the incitement to national, racial, or religious hatred and intolerance. The strongest criticism of such acts can be found in Article 20 of the ICCPR,⁴¹⁰ which states that “any advocacy of national, racial, or religious hatred and intolerance that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. Furthermore, specialist bodies consistently call for increased attention to be given to policies in a variety of fields, including education, awareness raising, and training, to allow the development of comprehensive and effective dialogue structures between state agencies and minority communities, and commit to “policies and practices aimed at encouraging and promoting the respect of rights and dignities” of *the other*.⁴¹¹

Most non-discrimination directives address the nuanced *instruction to discriminate* under the umbrella of discrimination, but none provide a clear definition of what is fundamentally meant by the concept, as it cannot be confined to specific instructions but should encompass preferences and encouragement to treat persons less favourably due to their ethnic, national, or religious affiliation.

In the specific context of implicit biases, national, religious, and ethnic affiliations can provoke automatic judgements, often ingrained below the conscious level of the human mind, that stem from an evolutionary propensity to be reluctant towards *the other*, guided by prevailing stereotypes, as addressed in previous chapters. From the perspective of research on discrimination within the justice system, efforts have mainly focused on socio-legal theories that address the discrimination arisen from prejudicial stances on national, religious, and racial belonging, with contrasting views proposed by conflict vs consensus theorists.

Whilst arguments of a homogenic, balanced and cohesive value-oriented society as a result of adequately implemented community protection instruments, such as criminal law, are at the root of consensus theories, reviews of the pertinence of conflict theory highlight that “police and minorities should be viewed as distinct groups that are

⁴¹⁰ OHCHR. (2010). Towards an interpretation of article 20 of the ICCPR: Thresholds for the prohibition of incitement to hatred. OHCHR.

⁴¹¹ European Institute for Gender Equality. (2017). Glossary of definitions of rape, femicide and intimate partner violence. Vilnius.





dynamically and intractably opposed”,⁴¹² concluding that discrimination is a symptom and an outcome of antagonistic relationships that rely on categorisations and generalisations.

Such analyses shed light on the factors that are significant in intergroup dynamics, emphasising the emotional responses that can be triggered by implicit biases and the stereotypes each group applies to the other – conflict theory supports the assumption that the majority can view minorities as criminal threats whilst minorities perceive majorities as racist, discriminatory, and authoritarian.⁴¹³ Despite such findings, the role that emotional triggers play in policing, and how they affect the legitimacy of the judicial system, are issues that are yet to be comprehensively addressed.

Context:

The issue of national, religious, and racial hatred and intolerance is not a new one. There is abundant literature showcasing instances of discrimination on these grounds throughout history, and a variety of approaches proposed by specialist bodies, international authorities and advocacy groups attempting to address and overcome it. In the context of an increasingly globalised world, addressing population differences in an ethical, non-discriminatory way is a key focus, highlighted by the increase in attention directed towards the prohibition of hate speech and incitement to violence in recent years.

Globalisation does not only influence the multiculturalism of the general population. Specifically related to correctional institutions, the rise of globalised crime and the increasing number of offenders from various ethnic and religious backgrounds pose a number of challenges, both for the offenders themselves, as well as for the institutions in charge of detaining them: from language barriers and cultural differences, to instances of discrimination and differential treatment.⁴¹⁴ Approaches to this rise in diversity vary greatly across countries, with some States adopting egalitarian traditions and largely

⁴¹² Devah, P., & Shepherd, H. (2008). The sociology of discrimination. *Annual Review of Sociology*, 181-209.

⁴¹³ Devah, P., & Shepherd, H. (2008). The sociology of discrimination. *Annual Review of Sociology*, 181-209.

⁴¹⁴ Bygnes, S. (2014). Ad hoc multiculturalism: prison staff approaches to cultural and religious diversity. In S. Aasen, S. Gloppen, A. Magnussen, & E. Nilssen, *Juridification and Social Citizenship in the Welfare State* (pp. Chapter 11, 203–220). Edward Elgar





avoiding addressing the differences.⁴¹⁵ Bygnes, whilst others take more proactive approaches to highlighting variances, understanding them, learning from past experiences, and adapting future policies and internal guidelines accordingly.⁴¹⁶

The vulnerability of *the other*, in this case those coming from minority national, racial, or religious backgrounds, is heightened in a prison context, as addressed in previous chapters. However, the unreliability of official statistics derived from distorted analyses offers a weak foundation for research on discrimination in the justice system.⁴¹⁷ In a cross-country analysis of the approaches employed by prison staff in dealing with cultural and religious diversity, Susanne Bygnes(2014) highlights that one of the major challenges is posed by “dilemmas related to individual prisoners’ rights vs concern for public safety”, revealing different processes of inclusion and exclusion of *the other*.

Relating to the British context, Bygnes(2014) argues that victimisation on the grounds of ethnic, national, and religious differences is most apparent in decision-making processes, with inmates facing difficulties in accessing religious services, practising their faith, and following dietary restrictions, but that discrimination is also present in the disciplinary treatment applied. Furthermore, addressing the Norwegian context, Bygnes (2014) highlights that the reluctance to address prison population differences, paired with a lateness to provide equal opportunities and a weakness of legal regulation bring forth systematic challenges in the recognition and accommodation of minority rights in prison, followed by ad-hoc approaches to tackling inmate cultural and religious variety.⁴¹⁸

It is no surprise that prisoners from minority backgrounds are considered to represent an exceptionally vulnerable group, placed at an increased disadvantage because of their offences and criminal records, as well as due to challenges of religious taboos, severed social ties, language barriers and xenophobia.⁴¹⁹ Given that research on biases and discrimination has highlighted that judgements and unconsciously attached stereotypes can stem from a lack of contact with *the other*, pertinent arguments of multicultural prison

⁴¹⁵ Bygnes, S. (2014). Ad hoc multiculturalism: prison staff approaches to cultural and religious diversity. In S. Aasen, S. Gloppen, A. Magnussen, & E. Nilssen, *Juridification and Social Citizenship in the Welfare State* (pp. Chapter 11, 203–220). Edward Elgar

⁴¹⁶ Beckford, 2006

⁴¹⁷ Kepper, 2000

⁴¹⁸ Bygnes, S. (2014). Ad hoc multiculturalism: prison staff approaches to cultural and religious diversity. In S. Aasen, S. Gloppen, A. Magnussen, & E. Nilssen, *Juridification and Social Citizenship in the Welfare State* (pp. Chapter 11, 203–220). Edward Elgar.

⁴¹⁹ Bygnes, S. (2014). Ad hoc multiculturalism: prison staff approaches to cultural and religious diversity. In S. Aasen, S. Gloppen, A. Magnussen, & E. Nilssen, *Juridification and Social Citizenship in the Welfare State* (pp. Chapter 11, 203–220). Edward Elgar.





environments provoking empathy and understanding as a result of habitual contact have also surfaced.⁴²⁰

If the number of minority inmates in prisons across the world is increasing, and their vulnerability doubles as a result of incarceration, providing fair treatment, understanding and empathy becomes an important focus for the institutions detaining them. Despite prison staff playing an important role in the fight against discriminatory practices in prisons, accounts of prisoners addressing the challenging mediation of racial, religious, and ethnic variety in the prison population should not be overlooked either.⁴²¹

Issues of identity and belonging are of utmost importance as they allow us to understand the coping mechanisms offenders adopt in order to negotiate the internal conflicts that can arise as a result of their incarceration. The discourse of cultural differences observed in some prisoners suggest notions of tolerance and unity, hinting towards the concept of **shared solidarity**, an “adaptive response to forced and close interpersonal contact”.⁴²² An integral part of self-identity of prisoners in the context of diluted prisoner collectives as a result of multicultural populations is language – hostile, discriminatory language can be interpreted as a refusal to support the individual in recreating the notions of identity whilst in prison, creating increased levels of exclusion and segregation.⁴²³

The desire to belong to a group that is mainly characterised by what we believe to be positive aspects allows for a subjective distancing from *the other*. In attaching our identities to groups and categories, we unconsciously allow our brains to view ingroup members as individuals but de-individualise members of the outgroup, resorting to stereotypes and prejudices towards the entire category, which are then visible in our reactions, impressions, treatment of and language used with *the other*. However, despite language being a tool for the effective communication and self-identification of minority prisoners, language barriers are also one of the most difficult challenges brought forth by the rise in global crime and the diversity of the prison population.

⁴²⁰ Spiegel, S. (2007). Prison "Race Riots": An Easy Case for Segregation. California Law Review .

⁴²¹ Phillips, C. (2008). Negotiating identities: Ethnicity and social relations in a young offenders' institution. Theoretical Criminology .

⁴²² Phillips, C. (2008). Negotiating identities: Ethnicity and social relations in a young offenders' institution. Theoretical Criminology .

⁴²³ Willis, G., Levenson, J., & Ward, T. (2010). Desistance and Attitudes Towards Sex Offenders: Facilitation or Hindrance. Journal of family violence .





EU standards and practice:

The increased focus on discrimination on national, racial, and religious grounds placed by specialised bodies and publicly funded institutions has highlighted that the effects of globalisation should be reflected in the religious and cultural plurality of prisons. In short, prisons should be expected to provide equal opportunities, treatment, and access to services, as well as an understanding of specific manifestations of cultural and religious diversity, including dietary requirements and rituals, as per the EU Guidelines on Freedom of Religion or Belief (2013) and European Prison Rules.⁴²⁴

Furthermore, safeguards should be established to ensure that prisoners can make reasonable requests and complaints in a safe and confidential environment. The risk of retaliation, intimidation, or otherwise negative consequences to making a request or reporting discrimination should be absent.⁴²⁵ Amongst the numerous initiatives developed in the fight against discrimination on the grounds of national, religious, or ethnic belonging, and as a result of active calls to create a unified approach across all Member States, the EU Commission adopted the 2020-2025 plan against racism, officially recognising the inherent need to address structural racism and the prevention of discrimination in law enforcement and criminal justice systems.⁴²⁶

The complexity of staff-prisoner relationships is addressed in recent research on discriminatory practices that arise as a result of ethnic, racial, and religious differences. Dignity, respect, and courtesy are behavioural characteristics that should be placed at the forefront of such interactions, aiding the break-down of opportunities for *othering*, barriers, and distrust. The fairness in treatment of minority communities should be apparent in the use of community specific resources, to create a network of support and help offenders in their efforts to rehabilitate, reintegrate and fight desistance.⁴²⁷

⁴²⁴ Council of Europe. (2006). European Prison Rules. Council of Europe.

⁴²⁵ Kimmett, E., & Tsintsadze, K. (2017). Tackling Discrimination in Prison: still not a fair response. Prison Reform Trust .

⁴²⁶ European Commission. (2020). A Union of equality: EU anti-racism action plan 2020-2025. European Commission .

⁴²⁷ Radicalisation Awareness Network. (2016). Approaches to violent extremist offenders and countering radicalisation in prisons. RAN.





Why is this relevant?

As we have already established, individuals who feel demeaned or subjected to prejudice and discrimination that stems from negative stereotypes associated with the ethnical or religious background they belong to, can internalise emotions of disrespect and diminishment, indirectly affecting their trust in the efficacy and legitimacy of the judicial system.⁴²⁸ It is therefore crucial for correctional staff to employ neutral communication, treatment, and behaviours towards minority prisoners, whilst also being aware of racial and religious conflicts that can arise within the prison population, as a result of multiculturalism and diversity. Given the increased vulnerability of minority prisoners, prison staff have the potential to not only influence the individuals themselves but can incite awareness of biases and stereotypes amongst the correctional community as a whole.

Recognising the importance of prisoner self-identity, their freedom to practice their religion and be treated fairly regardless of their ethnic, religious, and national affiliation is an important step prison staff can take in order to provide offenders with the opportunities and skills they require to enter the post-prison world “with viable possibilities for a noncriminal life”.⁴²⁹ Furthermore, just and equal treatment paired with structured communication approaches can create a more efficient working environment, reduce tensions in staff-prisoner and staff-staff relations and increase the confidence of the prisoners in the process.

It is important to clarify that implicit bias and automatic judgements that arise below the conscious level of our minds are not necessarily equal to racism, xenophobia, or hatred. However, they can provoke unwarranted stigmatisation and subjective categorisations of individuals, without offering the opportunity for cooperative communication. Despite the tendency to use cognitive shortcuts, enabling individuals to focus more successfully on other important aspects pertaining to their environment, the strength of the implicit bias can be reduced, as unconscious biases are pretty malleable.⁴³⁰

⁴²⁸ Jackson, J., Tyler, T., Bradford, B., Taylor, D., & Shiner, M. (2010). Legitimacy and procedural justice in prisons. *Prison service journal* .

⁴²⁹ Gronholm, P., Henderson, C., Deb, T., & Thornicroft, G. (2017). Interventions to reduce discrimination and stigma. *Social Psychiatry and Psychiatric Epidemiology* , 248-258.

⁴³⁰ Marsh, J. (2015, April 28). Can We Reduce Bias in Criminal Justice? *Greater Good Magazine, Politics, Articles & More*. Retrieved from https://greatergood.berkeley.edu/article/item/can_we_reduce_bias_in_criminal_justice





Furthermore, we need to acknowledge that “discrimination, stigma and exclusion may subsequently place an offender at an increased risk for recidivism”.⁴³¹ From a structural perspective, the collective support (or lack thereof) of the prison staff has the capacity to yield a strong influence on the progress, development, and potential rehabilitation of offenders. Understanding the common perceptions of sexual offenders and adjusting staff behaviour accordingly can aid the treatment of violent offenders, and indirectly increase trust, authority, and legitimacy.⁴³²

In light of recent international events drawing attention towards racial disparities in criminal justice systems, and despite the general consensus on the plurality of global populations, the increase in ethnically and religiously diverse prisoners, and active calls from specialised bodies to “strongly and publicly denounce the disproportionate use of force and racist tendencies in law enforcement”,⁴³³ recent reports highlight that the relevant authorities have so far failed at adequately tackling the structural racism and discrimination on the grounds of race, ethnicity, and religion, and promoting a unified, bias free criminal justice approach across all Member States.⁴³⁴ Such reports acknowledge and highlight the importance of extensive training, emphasising that countries which have adopted training modules against discriminatory practices have seen positive results in a short timeframe.

Further reading:	Layout 1 (prisonreformtrust.org.uk) Podcast: The Dutch experience – innovating practice to support foreign national prisoners - Penal Reform International Podcast: Prisoner consultation can contribute to the smooth running of prisons - Penal Reform International Roma Discrimination in Criminal Justice Systems Handbook on European non-discrimination law Legitimacy and procedural justice coversheet .doc (lse.ac.uk) Tackling discrimination in prison (prisonreformtrust.org.uk)
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⁴³¹ Clow, K., & Ricciardelli, R. (2012). Stigma-by-association: Prejudicial effects of the prison experience. In D. Russell, & C. Russell, *The Psychology of Prejudice: Interdisciplinary Perspectives on Contemporary Issues* (pp. 127-154). Nova Science.

⁴³² Grossi, L. (2017). Sexual offenders, violent offenders, and community reentry. *Aggression and violent behaviour*.

⁴³³ European Parliament. (2020). Resolution of 19 June 2020 on the anti-racism protests following the death of George Floyd. European Parliament.

⁴³⁴ Fair Trials. (2020). *Uncovering anti-Roma discrimination in criminal justice systems in Europe*.





5.6. Violence and inappropriate behaviour in sports

General definition

The concept of *sport* encompasses a wide spectrum of physical activities which, “through casual and organised participation, aim at expressing or improving physical fitness and mental well-being, forming social relationships or obtaining results in competitions at all level”, whilst also considering other forms of exercise, including but not limited to yoga, recreational games, and aerobic and fitness activities.⁴³⁵ Furthermore, the Code of Sport Ethics adds that sport should be “accessible to everybody; available to children and young people in particular; healthy and safe, fair, and tolerant, building on high ethical values; capable of fostering personal self-fulfilment at all levels; respectful of the environment; protective of human dignity, [...] and against any kind of exploitation of those engaged in sport”.⁴³⁶

In the specific context of correctional settings, physical activities have often been classified under various jurisdictions, pertaining to educational, recreational or health requirements. However, the basic stipulation and the required access to sport in prison is covered by the basic principles of correctional policies and laws across countries of interest.⁴³⁷ In light of such provisions, it is important to address the violence that remains prevalent in many sports activities across the world. Despite the growing body of well-documented benefits physical activities can have on prisoners, violent sports behaviour can jeopardise its role as an important correctional instrument for the promotion of health, positive values, and recreation.

The European Commission has acknowledged that violent behaviour in physical activities is not a concern just for those participating in major sports events but can take a variety of intolerance forms in different contexts, both on and off the pitches of major football clubs. This particular type of violence and aggression is often most visible in

⁴³⁵ Council of Europe. (2001). Recommendation No. R (92) 13 Rev of the committee of ministers to member states on the revised european sports charter. Council of Europe.

⁴³⁶ Council of Europe. (2010). Recommendation CM/Rec9 of the committee of ministers to member states on the revised code of sports ethics. Council of Europe.

⁴³⁷ Van Zyl, D., & Snacken, S. (2002). Principals of European Prison Law and Policy: Penology and Human Rights. Oxford: Oxford University Press.





physical activities that require teams but is also prevalent in expressions of toxic masculinity in prison settings, where weightlifting, boxing and martial arts have been shown to increase the assertion of dominance and construct social hierarchies.⁴³⁸

Considering that physical activities covered under the wide scope of sport can support the integration of vulnerable persons into the greater society, and offer a suitable platform for fostering the acceptance of diversity, mutual respect and inclusion, issues of racism and discrimination in sports have been recognised as highly important by specialist bodies, who indicate that such acts have become increasingly prevalent.⁴³⁹ Within this context and for the purpose of this training material, the main priorities of prison sports policies should focus on several key objectives,⁴⁴⁰ including but not limited to:

- The improvement of overall wellbeing,
- The encouragement of mental and physical fitness,
- The fostering of a sense of inclusion and integration,
- The elimination of discrimination and the promotion of greater equality,
- The enabling of behavioural and attitude change.

It is important to acknowledge the growing recognition that sports in correctional settings have received in recent years, highlighting the value they can bring to detainees and the prison community as a whole. However, sports in prison are faced with a variety of challenges and there is an inherent need to understand that the relationship of physical activities and confinement settings is complex and requires thorough assessment.⁴⁴¹

Context:

According to Goffman,⁴⁴² correctional systems are the perfect example of *total institutions*, harbouring a unique social environment through the isolation of diverse groups and the control exercised by rigid disciplinary regimes. Most importantly, such

⁴³⁸ Ricciardelli, R. (2013). Establishing and asserting masculinity in Canadian penitentiaries. *Journal of Gender Studies*, 170-191

⁴³⁹ European Union Agency for Fundamental Rights. (2010). Racism, ethnic discrimination and exclusion of migrants and minorities in sport. Belgium: European Union Agency for Fundamental Rights.

⁴⁴⁰ EPAS. (2014). Pan-European Conference "Sport and Prison". EPAS. EPAS.

⁴⁴¹ EPAS. (2014). Pan-European Conference "Sport and Prison". EPAS. EPAS.

⁴⁴² Goffman, A. (2009). *On the Run: Wanted Men in a Philadelphia Ghetto*. *American Sociological Review*





environments have drastic effects on the loss of self-identity, self-expression, and agency. Despite the restrictions that characterise prisons and the governing of prisoner's sense of belonging and freedom, a growing body of research emphasises the thriving of sport activities in a variety of prisons across the world, addressing issues of mental wellbeing, physical health, and social expression.⁴⁴³

Whilst the access and provision of opportunities to physical exercise and outdoor recreation activities can vary across the different governing institutions due to the diverse prison types and prison populations, it is crucial to acknowledge that prisoners' physically active identities can contextualise differently and influence their daily living in meaningful ways. However, the issue of violence as a result of such activities cannot be overlooked, and its risks must be adequately assessed in order for such challenges to be overcome. The Enlarged Partial Agreement on Sport encourages the active addressing of such challenges and emphasises that physical activities and recreational opportunities can be used as an efficient instrument to motivate and engage prisoner populations, "particularly those who typically respond better as a result of active participation".⁴⁴⁴

In a global context, addressing the gender variation in prison population is important when discussing potential violence and discrimination in physical activities. Considering that men comprise approximately 91% of prison populations across 80% of analysed countries, the relationship between sport and masculinity is fundamental.⁴⁴⁵ Addressing prison culture from a "hegemonic masculinity" perspective highlights issues of idealised characteristics prisoners attach to their identities and displays of domination, enhancing notions of a strict adherence to perceived inmate codes and hierarchies which indirectly shape their behaviour.⁴⁴⁶ The masculine identity regulated by prison life has been argued to be "earned" through the rehearsal and refinement of it, with physical activity playing an important role in the expression of identity and agency.⁴⁴⁷

It is therefore no surprise that certain prison sports, like boxing, martial arts, or weightlifting, have been found to be key contributors to the creation of a toxic masculine identity, through which prisoners can exert dominance and respect, and impose certain rules and adherence to a unique hierarchy by flaunting muscular bodies and a physical

⁴⁴³ Piggin, J., Mansfield, L., & Weed, M. (2018). *Routledge Handbook of Physical Activity Policy and Practice*. Routledge.

⁴⁴⁴ EPAS. (2014). *Pan-European Conference "Sport and Prison"*. EPAS. EPAS.

⁴⁴⁵ Walmsley, R. (2015). *World Prison Population List*. World Prison Brief.

⁴⁴⁶ Walmsley, R. (2015). *World Prison Population List*. World Prison Brief.

⁴⁴⁷ Featherstone, R., Sabo, D., Kupers, T., & London, W. (2003). *Prison Masculinities*. *Contemporary Sociology*.





“hardness”.⁴⁴⁸ This complex relationship between the construction of masculine prison identities, sport, and a culture of violence is characteristic of many male prisons across the world, and physical exercise is recognised as an important tool for increasing one’s strength, which implicitly allows prisoners to ease potential threats of violent attacks or even sexual assaults in prison.⁴⁴⁹

In the specific context of acknowledging personal biases and discrimination that can arise as a result of violent sports engagement in prison, the different expressions of violence must be understood in order to adequately respond to them. Given the difficulty posed by the prisoners’ stripped identity, when entering the prison system, and the creation of new identities as alpha males to allow for protection against attacks from other inmates, the expression of violence through sport can be.⁴⁵⁰

- **Instrumental** – tactical and intentional, characterised by premeditation and violent attacks using sports paraphernalia as a means of asserting dominance, imposing the hierarchal prison rules, or enacting revenge.
- **Expressive** – often unplanned, expressive sports violence is the result of heated matches and can be observed primarily in sports that require teams, or in contact sports like boxing or hockey.

If we consider this complexity of expressions of violence through physical activity in sport, to which we add the limitation of personal agency and the stripping of self-identity which can lead to internal struggles.⁴⁵¹ Norman, it is unrealistic to assume that sport can be used as the sole method of overcoming the challenges of rehabilitation in prisoners. However, physical activities have the potential to aid the implementation of psychological, social, and physical change, by offering a platform for health promotion, identity transformation and skills development, and encouraging active participation and cooperation, indirectly easing the rigidity of staff-prisoner, prisoner-prisoner, or staff-staff relationships.⁴⁵²

⁴⁴⁸ Piggin, J., Mansfield, L., & Weed, M. (2018). Routledge Handbook of Physical Activity Policy and Practice. Routledge.

⁴⁴⁹ Norman, M. (2017). Physical activity in prisons. In Routledge Handbook of Physical Activity Policy and Practice. Routledge.

⁴⁵⁰ Norman, M. (2017). Physical activity in prisons. In Routledge Handbook of Physical Activity Policy and Practice. Routledge.

⁴⁵¹ Norman, M. (2017). Physical activity in prisons. In Routledge Handbook of Physical Activity Policy and Practice. Routledge.

⁴⁵² EPAS. (2014). Pan-European Conference "Sport and Prison". EPAS. EPAS.





Despite the overrepresentation of male prisoners across correctional institutions around the world, the attention of specialist bodies has shifted to encompass the needs of women and girls in custody too, in the context of physical activity and recreational practices. The engagement of female prisoners in sports activities has been overlooked for many years due to the incorrect assumption that women are less interested in participating in such activities, disregarding the unique needs of women in custody, as well as gendered barriers and norms that are present in the wider community.⁴⁵³ The reflection of broader societal attitudes towards women and their engagement in physical activities is highlighted in an analysis of Spanish prisons, for example, which emphasises stereotypical attitudes towards understanding femininity and identity, biases which were shown to be held at the level of prison administration to justify the low rates of sports participation in women, in contrast to those of men held in separated units.⁴⁵⁴ The level of vulnerability in prisoners, and in particular female offenders, is a challenge for policy development across the world, especially in a context in which prison systems are mostly designed “by men, for men”.⁴⁵⁵ The discriminatory barriers that arise as a result from institutional challenges can be used as a tool to reflect on broader structures of inequality and marginalisation, issues that are highlighted by the overrepresentation of minorities in prison populations and the limited research on the relationship between physical activity in prison and the vulnerability of confined disadvantaged groups.

EU/International standards and practice:

At an EU level, sport in prison is covered under policies addressing the access to physical activity and recreation laid out in the European Prison Rules.⁴⁵⁶ Similar to the requirements proposed by the United Nations, the European Prison Rules make reference to the requirement of minimum access to outdoor activities, emphasising the need of “every prisoner [to] be provided with the opportunity of at least one hour of physical exercise every day in the open air, if the weather permits” (Article 27.1).

Furthermore, the European Prison Rules recognise the obligation to provide such opportunities to prisoners as a key aspect of correctional structures, forcing administrations

⁴⁵³ Meek, R., & Lewis, G. (2014). Promoting well-being and desistance through sport and physical activity: opportunities and barriers experienced by women in English prisons. *Women & Criminal Justice* .

⁴⁵⁴ Martos, D., Devis, J., & Sparkes, A. (2009). Sport and physical activity in a high security Spanish prison: and ethnographic study. *Sport education and society* .

⁴⁵⁵ Criminal Justice Joint Inspection, 2011

⁴⁵⁶ Council of Europe. (2006). European Prison Rules. Council of Europe.





to offer the necessary equipment and infrastructure in order for such opportunities to be adequately offered to prisoners (Article 27.4). The stipulations of these rules also highlight the crucial social importance of physical activity, emphasising the benefits of allowing inmates to associate with one another during recreational practices, and the promotion of pro-social networks and activities (Article 27.7).⁴⁵⁷ The adoption of these rules varies across countries, with the European Prison Observatory recognising some as examples of best practice in reference to a number of Member States, like Italy, Norway, Spain, and Greece, that offer opportunities for outdoor recreation and physical activities in excess of the guidelines.⁴⁵⁸

In the specific context of combating discrimination, violence and intolerance, the Enlarged Partial Agreement of Sport (EPAS) has called for active efforts of promoting diversity through physical activities in prison and the need to acknowledge various perspectives regarding sports in prison, efforts which have materialised through highlighting pan-European best practices and the identification of context-specific challenges that can occur when implementing sports related programmes.⁴⁵⁹ Furthermore, the ongoing use of the Handbook for Police Cooperation and the importance of efficient training for law enforcement staff in the handling of sports violence is highly encouraged by the European Commission.

Contrasting practices in the promotion of sport in prison can be found across the world. In the US, for example, supermax prisons have been reported to provide the minimum required opportunities for physical activity, often restricted to “small, caged areas deprived of physical equipment”.⁴⁶⁰ In the opposite spectrum, Norwegian correctional institutions, such as the Norway Prison Island, offers “relative free movement across the island”, encouraging prisoners to take part in a variety of both individual and team-centric forms of physical activity and recreation.⁴⁶¹ In the UK, the Greener on the Outside of Prisons programme saw significant improvements in areas of social skills and mental health of participating inmates, as well as increased knowledge of nutrition and

⁴⁵⁷ Council of Europe. (2006). European Prison Rules. Council of Europe.

⁴⁵⁸ Meek, R. (2014). Sport in Prison: Exploring the ROLE of Physical Activity in Correctional Settings. Routledge.

⁴⁵⁹ EPAS. (2014). Pan-European Conference "Sport and Prison". EPAS. EPAS.

⁴⁶⁰ Norman, M. (2017). Physical activity in prisons. In Routledge Handbook of Physical Activity Policy and Practice. Routledge.

⁴⁶¹ Norman, M. (2017). Physical activity in prisons. In Routledge Handbook of Physical Activity Policy and Practice. Routledge.





healthy eating habits through a tailored “green health” approach and targeted wellbeing practices.⁴⁶²

Other notable programmes recognised by the European Commission are projects that promote the safety of staff and participants in sports events (ProS4, ProS4+), approaches that address the cross-border risks to the integrity of physical activity (Sports Action) and the BeInclusive Sport Awards, which recognise the effects organised physical activities can have on the inclusion of vulnerable, disadvantaged populations.

Why is this relevant?

As we have seen in previous sections, prisons and correctional institutions are viewed as *total institutions* that indirectly create a unique and complex social context in which prisoners are stripped of their individuality, are at an increased risk of losing their self-identity and can become extremely vulnerable. This rigid hierarchy can reinforce tensions between staff and inmates, as it assigns stigma and the awareness of a low status, under the control of the prison staff.⁴⁶³ The reconstruction of the prisoners’ sense of self is limited. Objects that can be used to create the basis of a new identity, including sports paraphernalia, and activities that can promote a balance in the self-perceptions of prisoners therefore become increasingly attractive and useful, allowing them the opportunity to symbolically access social resources through physical activities, socialisation, teamwork, and mental and physical fitness.⁴⁶⁴

Physical activity in prisons can also be provided by the institutions as a way of exercising control over the prisoners’ behaviours and attitudes. As the growing body of studies and field literature highlights, the participation of inmates in physical activities can be beneficial in working off excess energy, that could otherwise express through violence, and can reduce inactivity and boredom levels.⁴⁶⁵ This in turn can reduce the tensions in staff-prisoner relations, reduce the stress levels of an already difficult working

⁴⁶² UCLAN/Groundwork UK. (2015). Impact Report: Greener on the Outside of Prisons. University of Central Lancashire.

⁴⁶³ Goffman, A. (2009). On the Run: Wanted Men in a Philadelphia Ghetto. *American Sociological Review*

⁴⁶⁴ Norman, M. (2017). Physical activity in prisons. In *Routledge Handbook of Physical Activity Policy and Practice*. Routledge.

⁴⁶⁵ Gallant et al., 2015





environment and increase the legitimacy of the institution, which we have discussed in previous sections and is an important aspect of consideration.⁴⁶⁶

Sports in prison environments can improve both the mental and physical health of the prisoners, having the potential to reduce the costs associated with healthcare. Acting as a platform in which prisoners can release their energy and excitement, physical activity on prison grounds can also reduce risk-taking behaviour and positively influence the rehabilitation of offenders by offering the means through which they can feel socially included, learning to work as a team and abide by rules and provisions, indirectly providing a pro-social network and positive role models.⁴⁶⁷

Prison staff play an active role in the behavioural development of inmates. In promoting fair, discrimination free engagement in sports activities on prison grounds, prison staff can take a proactive approach in engaging prisoner in consultations, through which adequate design and implementation of initiatives can be achieved. Such consultations and awareness of the groups that would benefit most from physical activity, can aid staff in the effective targeting of vulnerable groups whilst also giving managers the opportunity to assess what set of activities would encourage the highest level of motivation and participation amongst prisoners, which can positively influence prison targets.⁴⁶⁸

Last but not least, despite not every single prisoner in a certain correctional setting being attracted by physical activities, their beneficial role on desistance has been acknowledged in a growing body of recent research. Furthermore, physical activities can be used as a foundational starting point for the facilitation of other prisoner-centred practices, restorative justice approaches and increased engagement of a civic spirit through pro-social attitudes. By providing a means to motivate, inspire and actively engage prisoners, sport can be used as a meaningful tool to encourage therapeutic opportunities for peer-support, in which prison staff would play a key role.⁴⁶⁹

⁴⁶⁶ Piggan, J., Mansfield, L., & Weed, M. (2018). *Routledge Handbook of Physical Activity Policy and Practice*. Routledge.

⁴⁶⁷ Meek, R. (2014). *Sport in Prison: Exploring the Role of Physical Activity in Correctional Settings*. Routledge.

⁴⁶⁸ EPAS. (2014). Pan-European Conference "Sport and Prison". EPAS. EPAS.

⁴⁶⁹ EPAS. (2014). Pan-European Conference "Sport and Prison". EPAS. EPAS.





Further Reading:	Sport and reoffending Sport for youth rehabilitation Playing in the jail: sport as psychological tool for inmates UNODC Prisoner Rehabilitation A sporting chance: independent review of sport in youth and adult prisons Recommendations for international cooperation in combating sports violence
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Appendix A

Bias

Here are some examples the biases. Fill in the blank table with your own examples.

Source of Bias	Example
Their value base.	Believing that some offenders have no right to be helped because of what they have done.
Conscious or unconscious discrimination (whether class, gender, race, sexuality, beliefs about the proper demeanour of the interviewee and so on).	Believing that black people are naturally more likely to be aggressive.
Use of invalid models for example an understanding of behaviour drawn from the media rather than from properly researched.	Believing that the majority of sex offenders target children who are strangers to them.
The beliefs of the assessor in their ability to work effectively with a particular offender or group of offenders.	Thinking that you do not have the skills to work with offenders who are racist so leaving that work undone.
Unreal optimism wanting to believe you are being effective and that an individual is making progress or unreal pessimism refusing to see signs of progress.	An offender has attended group regularly and cooperated fully. You do not want to hear information that suggests they have been discussing further offending outside the group.





Being afraid of an individual offender.	An offender is middle class and articulate and makes you feel stupid so you do not challenge things you would with others.
Representative – assuming knowledge of one offender of a particular group means you know about all offenders in that group.	You work with a sex offender who repeatedly lies and lets you down. You assume that all sex offenders will be the same.
Confirmation – only paying attention to information that supports the judgement you have already reached.	You decide that a woman offender is over emotional and prone to exaggerating. When information reaches you that she is being abused you minimise its significance.
Availability – over reliance on information easily obtained.	You don't seek information from others relying on old reports and your own interview.
Source of Bias	Example
Their value base.	
Conscious or unconscious discrimination (whether class, gender, race, sexuality, beliefs about the proper demeanour of the interviewee and so on).	
Use of invalid models for example an understanding of behaviour drawn from the media rather than from properly researched.	
The beliefs of the assessor in their ability to work effectively with a particular offender or group of offenders.	
Unreal optimism wanting to believe you are being effective and that an individual is	





making progress or unreal pessimism refusing to see signs of progress.	
Being afraid of an individual offender.	
Representative – assuming knowledge of one offender of a particular group means you know about all offenders in that group.	
Confirmation – only paying attention to information that supports the judgement you have already reached.	
Availability – over reliance on information easily obtained.	





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INSTEAD OF CONCLUSION

The publication "Sensitive Oriented Work in Prisons" deals with the review and analysis of phenomena and processes related to discrimination in prisons, starting with a complex analysis of the system of execution of criminal sanctions in Serbia, Romania and Northern Macedonia and official powers in solving discrimination. Having in mind the exposed matter, as well as the goal of the publication, we can point out that for every human being and action, it is necessary to start from ourselves. At the individual level, we must constantly work on ourselves, on our individual, improve, strive to help ourselves and others, to understand other people's problems, needs, differences, to be objective, because we are all just one segment, part of the system. At a higher organizational and hierarchical level, the basis of action and protection of human rights is ethics and legality in action. After that come those entities within the system that evaluate and control our work. Finally, when the oversight mechanisms within the system are exhausted, there is external control, which must be multisectoral and independent, control that seeks control in order to improve the operation and functioning of the system, and not control for control itself. The recipe is in partnership with the society and the convict community, because we all have a common goal, a better and safer society through successful resocialization in the rehabilitation of convicts, and finally there are those who will evaluate the work and operation of the system, control and direct it.

It should be noted that the key to successful control is to determine the system of responsibility of all actors in the system of execution of criminal sanctions, which must be understood as follows: Responsibility is primarily based on a properly established and organized chain of command. Accountability implies respect for the principle that rules and regulations exist in order to be respected, and any violation of them must be punished. Responsibilities are based on the existence of mechanisms of civil control and supervision of all security actors, including the system of execution of criminal sanctions. Accountability implies the existence of a set of rules, procedures, methods and resources established by law to ensure that the control and supervision of the system of execution of criminal sanctions functions effectively and efficiently, as well as that the security sector fully performs its tasks.

In the end, we all have a special and personal responsibility as individuals, as part of society, responsibility for everything that has been done and not done, just the above-mentioned key and message of this publication is that we must improve and improve every day, primarily on an individual level and strive to through good deeds and understanding





of others, we understand ourselves, the environment, society and diversity. We hope that this publication and the training program for recognizing and responding to discrimination in prisons are a good answer to that, as a key result of the "Be without prejudices" project.





Kazeno popravni zavod Pozarevac Zabela
SERBIA



martin.matijasevic@yahoo.com



www.mpravde.gov.rs



Penitenciarul Timisoara
ROMANIA



ptimisoara@anp.gov.ro



www.anp.gov.ro



Centrul pentru Promovarea Invatarii Permanente
ROMANIA



daiana.huber@cpip.ro



www.cpip.ro



Zdruzenie na grajani IURIDICA PRIMA
NORTH MACEDONIA



zoranjovanovski43@gmail.com



www.iuridicaprima.mk

