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RESULTS OF LEGAL REPRESENTATION AND RESEARCH ON CORRUPTION IN PRISONS

Niš, May 2012.

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Results of legal representation and Research on corruption in prisons

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Contents

Introduction

Publication "Results of Legal Representation and Research on Corruption in Prisons" contains three independent reports. These are:

- "Filing complaints- results of legal representation and results analysis"
- "Legal representation in disciplinary procedures- results and results analysis"
- " Research-survey of prisoners' attitudes on corruption and fight against corruption within the system for the enforcement of criminal sanctions"

All three reports are results of the activities within the project "Step by Step through Prison System Reform" implemented in the period December 2010-June 2012. The Project was funded by EU Delegation in the Republic of Serbia.

What is common for the activities carried out before the reports is that they contribute to the overall objective and that is the reform of prison system. Separately, specific goals realized by activities were: improvement of situation of a prisoners on hunger strike (filing complaints), provision of legal aid for prisoners potential victims of torture or/and ill treatment (representation in disciplinary procedures) and contribution to the reduction of level of corruption in prisons (research on corruption)

Activities are created in a way that their implementation surely provides needed minimum, and more of information in planned area and at the same time opening possibility for mapping many other circumstances which otherwise, in overpopulation conditions, are not easy to determine by common monitoring procedure.

We hope that findings and recommendations, consisted in these three reports, will contribute to a change in imprisonment practice which is in the end the only confirmation of implementation and success of the reform of the system for the enforcement of criminal sanctions.

Aleksandar Cvejić, Verica Milošević, Lidija Vučković, Zoran Gavrilović

FILING COMPLAINTS- RESULTS OF LEGAL REPRESENTATION AND RESULTS ANALYSIS

A/ Review of sent submissions within the Enforcement system, in individual cases of prisoners

(Legal basis: European Prison Rules 70.1..., Article 114, 114a, 114b of the Law on the Enforcement of Criminal Sanctions...)

* Criterion for representation of prisoners is that they were on hunger strike and subject for representation was the reason for which they were on hunger strike.

1) I.N. (Penitentiary Niš – personal number 7007, Penitentiary Sremska Mitrovica – personal number 12324)
- Request for transfer to Director of Directorate for the Enforcement of Criminal Sanctions (04.02.2011.)
- Complaint to the silence of the Directorate to the Ministry of Justice (29.03.2011)
- Claim filed to the Ministry of Justice for the rejected request for transfer by Directorate (14.04.2011., amendment claim 18.04.2011.)
- Request for transfer submitted to the Department for transfer of prisoners and extradition within the Ministry of Justice (29.03.2011) and Sector for normative affairs and international cooperation (29.03.2011)
- Letter to Borko Stefanović (13.04.2011.)
- Claim filed to Administrative Court, for annulment of the Decision brought by the Ministry of Justice (28.05.2011)
- Claim filed to Constitutional Court (15.08.2011.)

2) M.K. Penitentiary Niš, personal number 8216
- Letter to the Head of Health Care Service related to the fulfillment of right to health care protection (31.03.2011.)
- Letter to the Head of Health Care Service related to the fulfillment of right to health care protection and proposal for continual medical treatment (19.08.2011.)
- Complaint to the Head of Penitentiary Niš for not receiving replies to letters sent to the Head of Health Care Service (15.10.2011.)
- Complaint to Medical Chamber of Serbia for inappropriate medical care and inadequate medical treatment of a patient (23.09.2011.)

3) A.S. Penitentiary Niš, personal number 5178
- Request for transfer to the Head of Directorate (14.02.2011)/ amendment request (31.03.2011.)
- Complaint to the decision of the Director of Directorate sent to the Ministry of Justice (19.05.2011.)

4) D.B. Penitentiary Niš, personal number 7514
- Request for transfer to the Head of Directorate (18.02.2011.)/ Amendment request (07.03.2011.)
- Complaint to the decision of the Director of Directorate on rejecting the complaint for transfer sent to the Ministry of Justice (19.05.2011)
- Request to the Head of Penitentiary Niš for revision of measures of sending him to the Department under special surveilance (21.03.2011.)

5) V.R. Penitentiary S. Mitrovica, personal number 5081
- Urging to the Head of Penitentiary for urgent determining of facts on guilt in disciplinary procedure (07.03.2011.)

6) F.G. Penitentiary Zabela, personal number 2979

- Request for transfer to the Head of Directorate (28.04.2011.)
- Request to Penitentiary Zabela for determining whether the transfer request was submitted (20.07.2011)
-Request to the Head for determining whether the transfer request was submitted to the Penitentiary (25.08.2011.)
- Complaint to the Head of Penitentiary Zabela for not having forwarded the transfer request to the Director of Directorate (07.09.2011.)
- Complaint to the Decision brought by the Head of Penitentiary Zabela to the Director of Directorate (21.09.2011)

7) Group of disabled prisoners accommodated in Penitentiary Hospital Zabela ((N.A. personal number 33292, S.M. personal number 3391, I.N. personal number 3824, S.Z. ,V.M. personal number 3745)
- Complaint to the Head of Penitentiary Zabela for non-realization of rights of disabled persons with a request for removal of architectural barriers within the hospital and request for ensuring accommodation on the ground floor of the hospital (23.08.2011.)

8) N.P. Penitentiary Niš, personal number 6182
- Letter to the Head of Health Care Service related to the fulfillment of right to health care protection (29.08.2011.)

9) M.I. District Prison Leskovac, personal number 333/11
- Complaint to the Head of District Prison Leskovac for inadequate accommodation (04.10.2011.)
- Complaint to the Head of the Directorate for the Enforcement of Criminal Sanctions for not bringing a decision based on the complaint (01.12.2011.)
- Claim filed to the Head of Directorate related to the decision brought by the Head of District Prison Leskovac (04.11.2011.)

10) K.D. District Prison Leskovac, personal number 372/11
- Complaint to the Head of District Prison Leskovac for inappropriate accommodation (04.10.2011.)
- Complaint to the Head of the Directorate for the Enforcement of Criminal Sanctions for not bringing a decision based on the complaint (01.12.2011.)

11) M.V. Penitentiary Niš, personal number 9126
- Complaint to the Head of Health Care Service for the provided medical care to the prisoner (28.10.2011.)
- Complaint to the Medical Chamber of Serbia for inappropriate medical care and inadequate medical treatment of the patient. (04.11.2011.)

12) I.N. Penitentiary Sremska Mitrovica, personal number 12324
- Complaint to the Head of Penitentiary Sremska Mitrovica for unjustified reduction of treatment group (01.11.2011)
- Claim filed to the Director of Directorate related to the decision brought by the Head of Penitentiary S.Mitrovica from 02.12.11. (12.12.2011)

13) M.M. Penitentiary Sremska Mitrovica, personal number 522
- Request to Penitentiary Sremska Mitrovica for the provision of copies of verdicts imposed by District Court in Beli Manastir- Republic Srpska Krajina (16.01.2012.)

14) B.K. Penitentiary Niš, personal number 8638
- Request to the Head of Health Care Service for the Provision of Medical File Copy (15.12.2011.)
- Complaint to the Head for disabling insight in medical file (06.02.2012.)
- Claim filed to the Head of Directorate related to the decision brought by the Head of Penitentiary Niš (02.03.2012.)

15) Z.B. Penitentiary Niš, personal number 7090
- Initiative (to the heads of Penitentiary Niš and S.Mitrovica) for transfer from Penitentiary Niš to Penitentiary Sremska Mitrovica (07.02.2012.)

B/ Submissions, representations, sorted based on need for whose non-realization the prisoner was on hunger strike

I/ Requests for transfer

Legal Grounds: Law on the Enforcement of Criminal Sanctions*, Article 116

* On May 17th 2011 amendments to the Law on the Enforcement of Criminal Sanctions came into force (Official Gazette of the Republic of Serbia 31/11), which no longer anticipate possibility of submitting request for transfer. Further in the Penitentiaries reasons which the prisoner gives in the submission/initiative to the Head are considered, based on which the Head may submit proposal for transfer.

1. I.N. (Penitentiary Niš – personal identification number 7007)

1.1.1. Request for transfer to Director of Directorate for the Enforcement of Criminal Sanctions. (04.02.2011.)

Reply to the Request Negative

Date of Reply 29.03.2011.

Is the reply received within deadline: No*
* Law On the Enforcement of Criminal Sanctions does not anticipate the deadline for deciding upon the Request for Transfer. However, Law on Administrative Procedure prescribes a deadline of 2 months for bringing a decision. If this deadline is not respected, it is not considered an offence but it is considered a reason to file a claim.

Explanation from the written reply: From the Agreement signed between FRY and UNMIK, it comes that the prisoner, even when there are justified reasons for transfer, does not have right to transfer, but the Agreement only gives possibility of transfer and whether the transfer will be carried out or not depends on estimation of Parties, i.e. persons authorized to approve transfer; it is estimated that family reasons given in prisoner's request may not make influence on the different decision of this organ.

1.1.2. **Complaint to the silence of the Directorate to the Ministry of Justice (29.03.2011)**

Reply to the Request Negative

Date of Reply 29.04.2011

Is the reply received within deadline: Yes

Explanation from the written reply: "Director of Directorate acted upon the prisoner's request for transfer and in line with Article 116 of Law On the Enforcement of Criminal Sanctions and provisions of the Law on General Administrative Procedure, brought a decision that lodged complaint is unfounded."

Other: -

1.1.3. Claim filed to the Ministry of Justice for the rejected request for transfer by Directorate (14.04.2011., amendment claim 18.04.2011.)

Reply to the Request Negative

Date of Reply 16.05.2011.

Is the reply received within deadline: Yes

Explanation from the written reply: "... Agreement signed between FRY and UNMIK anticipates that each Party may request transfer, i.e. that a prisoner may be transferred under the supervision of other Party, and in line with provisions of the Agreement, so as to serve the remaining part of the Sentence. Transfer of prisoners, according to the Agreement, represents only possibility of transfer."

Other: -

1.1.4. Request for transfer submitted to the Department for transfer of prisoners and extradition within the Ministry of Justice (29.03.2011)/ No reply/ and Sector for normative affairs and international cooperation (29.03.2011)/ Negative reply/

1.1.5. Letter to Borko Stefanović (13.04.2011.)

1.1.6. Claim filed to Administrative Court, for annulment of the Decision brought by the Ministry of Justice (28.05.2011)

Reply to the Request Negative

Date of Reply 23.06.2011

Is the reply received within deadline: There is no legal deadline for getting the reply.

Explanation from the written reply: ``Since the circumstances for which the transfer is required again, and bearing in mind that end of the sentence is on 16.01.2021. as well as that re-socialization process has started and is undisturbed, which has to be continued with in Penitentiary Niš, and which is territorially the closest one to the place of residence of his family which lives in Kosovo and Metohija, based on the evaluation of this Court, the defendant organ rightly finds that there are not justified reasons and special circumstances for the transfer of claimant from Penitentiary Niš to Institution for Enforcement of Sanctions on the territory of Kosovo and Metohia.“

Other: -

1.1.7. Claim filed to Constitutional Court (15.08.2011.)

Reply to the Request Not received.

1.2. Specificity of the case/reasons for hunger strike
- Impossibility to fulfill right to visits by family, due to long distance from their place of residence and their poverty.
- Political circumstances (the prisoner is a Serb from Kosovo whose family lives in Kosovo and wants to be taken back in order to serve his sentence there).

1.3. Result: Prisoner was transferred to Penitentiary Sremska Mitrovica on August 19th 2011.

1.4. Legal Grounds of prisoner's request:

European Prison Rules (Rule 17.1 .....)
Law on the Enforcement of Criminal Sanctions: Articles 78, 116, 117

2. A.S. Penitentiary Niš, personal identification number 5178

2.1.1. Request for transfer to Director of Directorate (14.02.2011)/ amended request (31.03.2011.)

Reply to the Request Negative

Date of Reply 16.05.2011.

Is the reply received within deadline: No*
* Law On the Enforcement of Criminal Sanctions does not anticipate the deadline for deciding upon the Request for Transfer. However, Law on Administrative Procedure prescribes a deadline of 2 months for bringing a decision. If this deadline is not respected, it is not considered an offence but it is considered a reason to file a claim.

Explanation from the written reply: "Based on the insight in the Act of Penitentiary in Sremska Mitrovica Number 702-5/11-236 from 20.04.2011 it is defined that the Head did not give his approval for transfer of the prisoner, because accommodation capacities of the above mentioned penitentiary are overpopulated.

Having taken insight in the Act of Penitentiary in Požarevac-Zabela Number 702-5351-2/2011-02 from 26.04.2011, it is defined that the Head did not give approval for transfer of the prisoner because the accommodation capacities of the above mentioned penitentiary are overpopulated.

Other: -

2.1.2. Complaint to the Decision of Director of Directorate to Ministry of Justice (19.05.2011.)

Reply to the Request Negative

Date of Reply 17.08.2011.

Is the reply received within deadline: No*
* Law On the Enforcement of Criminal Sanctions does not anticipate deadline for decision making, but, according to the Law on Administrative Procedures, it should be decided upon the complaint within 2 months.

Explanation from the written reply: Appellate body confirmed the decision of first instance body, evaluating that it was brought in line with the Law and presented facts. Overpopulation of accommodation capacities in other prisons is justified reason to reject the transfer. Besides that, health care protection is provided in the same way to prisoners in all penitentiaries, and if the penitentiaries don't have capacities, persons are sent to a special prison hospital in Belgrade. Opinipon of correctional service related to transfer was positive.

Other: Appellation in decision making is anticipated for reason to control first instance body, and thus it is necessary that the appellation body more thoroughly investigate the complaint, since only in this way the right to complaint will be realized as constitutional right.

2.2. Specificity of the case/ reason for hunger strike

Conviction of a prisoner that he will be exposed to the revenge of the guards, for the fact that one of their colleagues was dismissed due to negligence in the work committed in the case of successful escape of this prisoner from the field prison unit in other municipality.

2.3. Result: **-**

2.4. Legal Grounds of prisoner's complaint:

Law On the Enforcement of Criminal Sanctions: Article 65

3. D.B. Penitentiary Niš, personal identification number 7514

3.1.1Request for transfer to Director of Directorate (18.02.2011.)/ amended request (07.03.2011.)

Reply to request: Negative

Date of reply: 05.05.2011.

Is the reply received within deadline: No*
* Law On the Enforcement of Criminal Sanctions does not anticipate the deadline for deciding upon the Request for Transfer. However, Law on Administrative Procedure prescribes a deadline of 2 months for bringing a decision. If this deadline is not respected, it is not considered an offence but it is considered a reason to file a claim.

Explanation from the written reply: "Based on the insight in the Act of Penitentiary in Sremska Mitrovica Number 702-5/11-236 from 05.04.2011 it is defined that the Head did not give his approval for transfer of the prisoner, because accommodation capacities of the above mentioned penitentiary are overpopulated."

3.1.2.Complaint to the Decision of Director of Directorate on rejecting request for transfer to the Ministry of Justice (19.05.2011)

Reply to request: Negative

Date of Reply: 22.08.2011.

Is the reply received within deadline: No*

* Law On the Enforcement of Criminal Sanctions does not anticipate the deadline for deciding upon the Request for Transfer. However, Law on Administrative Procedure prescribes a deadline of 2 months for bringing a decision. If this deadline is not respected, it is not considered an offence but it is considered a reason to file a claim.

Explanation from the written reply: Appellate body confirmed the decision of first instance body, evaluating that it was brought in line with the Law and presented facts. Overpopulation of accommodation capacities in other prisons is justified reason to reject the transfer. Opinion of correctional service related to transfer was positive.

Other: Appellation in decision making is anticipated for reason to control first instance body, and thus it is necessary that the appellation body more thoroughly investigate the complaint, since only in this way the right to complaint will be realized as constitutional right

3.1.3. Request to the Head of Penitentiary Niš for revision of measures of sending him to the Department under special surveilance (21.03.2011.)

Reply to request: No reply

Date of reply: -

Is the reply received within deadline: -

Explanation from the written reply: -

Other: The Law does not anticipate possibility of submitting request for the revision of measures of sending a person to the Department under Special Surveilance, but it is not forbidden to file such a request. If a prisoner or his attorney thinks that there are no reasons for which this measure was imposed, they can propose to the Head to reconsider it.

3.2. Specificity of the case/reason for hunger strike

Watering hose, from parts of 1-1.5 m. length, which was confiscated from another prisoner and was intended to D.B., to water the garden, was interpreted as D.B.'s planning of escape. Based on his statement, he was questioned by the guards for an hour or two, accusing him that he planned the escape, which he experienced as a big psychological pressure under which the prisoner succumbed to pressure and in one moment, he injured himself with a carving tool. The prisoner was not disciplinary punished earlier, he practiced gardening and carving and it meant a lot to him. Because of self-injuring the prisoner was later punished in the disciplinary procedure. Procedure for the attempted escape was never initiated.

3.3. Result: -

3.4. Legal Grounds of the prisoner's request:

Law On the Enforcement of Criminal Sanctions: 65, 116, 139
- The purpose of imprisonment in the part of conduction of treatment program (prisoner as a mentally labile person, recognizes, as enemy environment the penitentiary in which he is located; one should bear in mind that program of his re-socialization had been successfully implemented until the incident).

4. F.G. Penitentiary Zabela, personal identification number 2979

4.1.1. Request for transfer to Director of Directorate (28.04.2011.)

Reply to request: Not received

Date of reply: -

Is the reply received within deadline: *
* Law On the Enforcement of Criminal Sanctions does not anticipate the deadline for deciding upon the Request for Transfer. However, Law on Administrative Procedure prescribes a deadline of 2 months for bringing a decision. If this deadline is not respected, it is not considered an offence but it is considered a reason to file a claim.

Explanation from the written reply: -

Other: The request was made and sent to the prisoner to sign it and send it via Penitentiary Zabela to Director of Directorate for the Enforcement of Criminal Sanctions. F.G. declares that he did so but in the Directorate for the Enforcement of Criminal Sanctions they claim that they have never received the request. Until now we have not been able to determine what happened with the request from the moment when it was submitted to Penitentiary Zabela.

4.1.2./ 4.1.3. Request to Penitentiary Zabela for determining whether the transfer request was submitted (20.07.2011/ 25.08.2011.)

Reply to request: Not received

Date of reply: : -

Is the reply received within deadline: *
*There is no legal deadline for the delivery of reply

Explanation from the written reply: -

Other: -

4.1.4. Complaint to the Head of Penitentiary Zabela for not having forwarded the transfer request to the Director of Directorate (07.09.2011.)

Reply to request: Negative

Date of reply: 15.09.2011.

Is the reply received within deadline: Yes

Explanation from the written reply: "Having considered the statements in the complaint of the prisoner, hereby it is determined that the prisoner had not submitted the request to the treatment officer in line with the determined procedure and thus he could not get any receipt on sending, and through the register office in the Penitentiary it was defined that the request was not registered in the commander's pavilion book. In relation to the requested transfer, and based on the report issued by the Treatment Service, Head of Penitentiary decided that there were no grounds for the transfer to Penitentiary Niš and that the prisoner received the reply related to the above mentioned. "

Other: -

4.1.5. Complaint to the Decision brought by the Head of Penitentiary Zabela to the Director of Directorate (15.09.2011)

Reply to request: Negative

Date of reply: 21.10.2011.

Is the reply received within deadline: Yes

Explanation from the written reply: "...the opinion of Penitentiary that there were no reasons for transfer of the named, bearing in mind the duration of sentence, type of committed crime, fact that according to the Assignment Act by the Minister of Justice, persons with the imposed sentence of 20, 30, 40 are assigned to Penitentiary Zabela, i.e. Closed type Penitentiary with special security."
"...Based on the insight in the Commander's book there were no sent submissions by the prisoner from 28.04.2011 till 16.05.2011."

Other: -

4.2.Specificity of the case/ reason for hunger strike

The prisoner is Bosniak and Muslim from Novi Pazar. He is deprived of right to food which satisfies the requests of the religion to which he belongs, as well as the conditions to practice religious rites. The other problem is that, due to the long distance from the place of residence of his family that lives in Novi Pazar, the number of their visits is reduced.

4.3. Result: **-**

4.4. Legal Grounds of the prisoners request:

Law On the Enforcement of Criminal Sanctions: Article 70, paragraph 3 – nutrition in line with religious beliefs. 78, 113

5. Z.B. Penitentiary Niš, personal identification number 7090

5.1.1. Initiative (to the heads of Penitentiary Niš and S.Mitrovica) for transfer from Penitentiary Niš to Penitentiary Sremska Mitrovica (07.02.2012.)

Reply to request: Not received

Date of reply: -

Is the reply received within deadline: -

Explanation from the written reply: -

Other: -

5.2. Specificity of the case/ reason for hunger strike

Big distance from the residence (Backi Petrovac, Vojvodina) of his family (and there is a Penitentiary closer to the residence) reduces the number of visits.

5.3. Result: -

5.4. Legal Grounds of prisoner's request:

Law On the Enforcement of Criminal Sanctions, Article 78

TOTAL:

a. Submitted:

- **Basic documents:**

Requests for transfer/ to heads: 2

Requests for transfer/ to Director of Directorate: 4

- **Complaints to decision on basic document:**

Complaints to decision of the Head: 1
Complaints to decision of the Director: 4

Total: 11

b. Received replies:

Total replies: 8

Total positive replies 1st instance: 0
Total negative replies 1st instance: 4

Total positive replies 2nd and higher instance: 0
Total negative replies 2nd and higher instance: 4

Total replied within deadline: 3
Total not replied within deadline: 5
For others there is no deadline.

II/ Complaints to the Head for inadequate accommodation within Penitentiary

Legal Grounds: Law On the Enforcement of Criminal Sanctions, Articles 63, 66, 68

1. M.I. District Prison Leskovac, personal identification number 333/11

1.1.1. Complaint to the Head of District Prison Leskovac for inadequate accommodation (04.10.2011.)

Reply to Request: Negative

Date of reply: 04.11.2011.

Is the reply received within deadline: No

Explanation from the written reply: "Statements that the named prisoners are isolated are false. Namely, prisoners classified in categories V1 and V2 are accommodated in Pavilions 1, 2 and 3, so it is about the Pavilions in which prisoners in given categories are accommodated, not isolated."

Other: -

1.1.2. Complaint to the Head of the Directorate for the Enforcement of Criminal Sanctions for not bringing a decision based on the complaint (01.12.2011.)

Reply to Request: Negative

Date of Reply: 30.11.2011.

Is the reply received within deadline: Yes

Explanation from the written reply: "Based on the received data and insight in submitted acts from Penitentiary Leskovac, it is defined that the Head of District Prison, acting upon the submission-complaint, replied to it on 04.11.2011. with a submission which had to be re-delivered to the attorney due to the problem of delivery, which caused the passing of time and which in details explains and replies to everything requested by the complaint. "

Other: -

1.1.3. Claim filed to the Head of Directorate related to the decision brought by the Head of District Prison Leskovac (04.11.2011.)

Reply to Request: Negative

Date of Reply: 28.12.2011.

Is the reply received within deadline: Yes

Explanation from the written reply: From the submitted documents District prison Leskovac concludes that there is no violation of the right to which the claimant complains. The prisoner was transferred to District Prison Vranje on 16.12.2011 and thus it is pointless to decide about the given complaints.

Other: Formally negative reply was received. However, the explanation lists actions by which proposals of the defender are accepted and conducted, so that in the end there is no possibility for the request to be approved because the prisoner has already been, apparently by the will of Directorate, transferred. M.I. was classified in category VI and after the sent complain he was transferred to District Prison Vranje.

1.2. Specificity of the Case/Reason for hunger strike

The prisoner is accommodated in the closed part of semi-opened type prison which violates his right to appropriate accommodation, bearing in mind the group in which he was classified. Due to inadequate accommodation, right to walk in open air as well as right to free activities (walk, gym, chess, social games…) were also violated.

1.3. Result: Prisoner M.I. was classified in category V1 and he was transferred to District Prison Vranje.

1.4. Legal grounds of prisoner's request:

Law on the Enforcement of Criminal Sanctions: 66 i 68

2. K.D. District Prison Leskovac, personal identification number 372/11

2.1.1 Complaint to the Head of District Prison Leskovac for inappropriate accommodation **(04.10.2011.)**

Reply to Request: Negative

Date of Reply: 04.11.2011.

Is the reply received within deadline: No

Explanation from the written reply: "Statements that the named prisoners are isolated are false. Namely, prisoners classified in categories V1 and V2 are accommodated in Pavilions 1, 2 and 3, so it is about the Pavilions in which prisoners in given categories are accommodated, not isolated."

Other: -

2.1.2. Complaint to the Head of the Directorate for the Enforcement of Criminal Sanctions for not bringing a decision based on the complaint (01.12.2011.)

Reply to Request: Negative

Date of Reply: 30.11.2011.

Is the reply received within deadline: Yes

Explanation from the written reply: "Based on the received data and insight in submitted acts from Penitentiary Leskovac, it is defined that the Head of District Prison, acting upon the submission-complaint, replied to it on 04.11.2011. with a submission which had to be re-delivered to the attorney due to the problem of delivery, which caused the passing of time and which in details explains and replies to everything requested by the complaint."

Other: -

2.2. Specificity of the Case/Reason for hunger strike

The prisoner is accommodated in the closed part of semi-opened type prison which violates his right to appropriate accommodation, bearing in mind the group in which he was classified (voluntarily started the sentence serving, before the validity of the verdict, for which reason he should be accommodated in the semi-opened part of the prisons, where prisoners have possibility to enjoy a higher number of commodities, and not in the closed part of the prison.). Due to inadequate accommodation, right to walk in open air in duration of two hours as well as right to free activities (walk, gym, chess, social games…) were also violated.

2.3. Result: K.D. was transferred to Penitentiary Niš.

2.4. Legal grounds of prisoner's request:

Law on the Enforcement of Criminal Sanctions: Articles 63, 66, 68

TOTAL:

a. Submitted:

- **Basic documents:**

Complaint to the Head for inadequate accommodation and non-realization of other rights: 1

- **Complaints on the Decision on basic document:**

To Director of Directorate: 2

Total: 3

b. Received replies:

Total replies: 3

Total positive replies 1st instance: 0
Total negative replies 1st instance: 1

Total positive replies: 2nd and higher instance: 0
Total negative replies 2nd and higher instance: 2

Total replied within deadline: 2
Total not replied within deadline: 1

III/ Submissions (letters*, complaints, claims) related to fulfillment of right to health care protection

* Letter of the attorney or prisoner is a request for the realization of a right sent to the Head of Health Care service in Penitentiary.

Legal Grounds: Law on the Enforcement of Criminal Sanctions, 101 - 105

1.M.K. Penitentiary Niš, personal identification number 8216

1.1.1. Letter to the Head of Health Care Service related to the fulfillment of right to health care protection (31.03.2011.)

Reply to Request: Not received

Date of Reply: -

Is the reply received within deadline: Legal deadline is five days so it means that it is not respected (Article 101, Law on the Enforcement of Criminal Sanctions, Article 26 of the Law on Health Care Protection and Article 33 of the Rulebook on House Rules)

Explanation from the written reply: -

Other: Head of the Service is obliged to reply to the submission of a prisoner or his attorney within five days in written form. Besides that he is obliged to take up all measures of health care protection in line with the Law on the Enforcement of Criminal Sanctions and other regulations. The prisoner did not state that his problem was solved in later contacts.

1.1.2. Letter to the Head of Health Care Service related to the fulfillment of right to health care protection and proposal for continual medical treatment (19.08.2011.)

Reply to Request: Not received

Date of Reply: -

Is the reply received within deadline: Legal deadline is five days so it means that it is not respected (Article 101, Law on the Enforcement of Criminal Sanctions, Article 26 of the Law on Health Care Protection and Article 33 of the Rulebook on House Rules).

Explanation from the written reply: -

Other: -

1.1.3. Complaint to the Head of Penitentiary Niš for not receiving replies to letters sent to the Head of Health Care Service (15.10.2011.)

Reply to Request: Not received

Date of Reply: -

Is the reply received within deadline: Legal deadline is 15 days so it means that it is not respected (Article 101, Law on the Enforcement of Criminal Sanctions, Article 33 of the Rulebook on House Rules)

Explanation from the written reply: -

Other: -

1.1.4. Complaint to Medical Chamber of Serbia for inappropriate medical care and inadequate medical treatment of a patient (23.09.2011.)

Reply to Request: Negative

Date of Reply: 27.02.2012.

Is the reply received within deadline: No deadline

Explanation from the written reply: "Ethical Board of Medical Chamber of Serbia is not authorized to evaluate or control the work of the management of Penitentiary Niš, and regarding the described situation there is no clue that the doctors in this Penitentiary committed any violation of professional duties or provisions of the Codex of professional ethics of Medical Chamber of Serbia, so that in concrete situation, Medical Chamber of Serbia can not directly react"

Other: Having taken insight in medical documentation of the prisoner it is stated that he did not get complete therapy and treatment prescribed by doctors of other specialties and it is an integral part of the prisoner's medical file. The consequence of the lack of therapy and treatment may be worsening of the existing diseases and eventual increase in the level of disability.

1.2.Specificity of the Case/Reason for hunger strike

M.K. is a 1st category disabled worker, suffers from numerous chronic diseases for which he does not receive prescribed therapy. Having taken insight in the copy of his medical files it is determined which therapy the prisoner should be receiving.

1.3.Result: In the meantime the prisoner gave up the complaint because he managed to make an agreement with the Health Care Service, related to which a conclusion was received on 28.11.2011.

1.4.Legal grounds of prisoner's request:

Law on the Enforcement of Criminal Sanctions: 65, 101-105
Rulebook on House Rules: 32, 33

2. M.V. Penitentiary Niš, personal identification number 9126

2.1.1. Complaint to the Head of Health Care Service for the provided medical care to the prisoner (28.10.2011.)

Reply to Request: Not received

Date of Reply: -

Is the reply received within deadline: Legal deadline is five days so it means that it is not respected (Article 101, Law on the Enforcement of Criminal Sanctions, Article 33 of the Rulebook on House Rules).

Explanation from the written reply: -

Other: -

2.1.2. Complaint to the Medical Chamber of Serbia for inappropriate medical care and inadequate medical treatment of the patient (04.11.2011.)

Reply to Request: Negative

Date of Reply: 27.02.2012.

Is the reply received within deadline: No deadline

Explanation from the written reply: "Ethical Board of Medical Chamber of Serbia is not authorized to evaluate or control the work of the management of Penitentiary Niš, and regarding the described situation there is no clue that the doctors in this Penitentiary committed any violation of professional duties or provisions of the Codex of professional ethics of Medical Chamber of Serbia, so that in concrete situation, Medical Chamber of Serbia can not directly react. "

Other: The prisoner complaints to the lack of medical care. Namely, although being a disabled person, he does not have a personal assistant, he does not have appropriate medicines, primarily for nervous system. As well, he states that after the kidney surgery he got a stomach hernia which is not treated medically in Penitentiary Niš. At one occasion he fell in the middle of the corridor of the medical hospital and there were no medical technicians to help him to stand up. He was laying like that for a long period of time.

2.2. Specificity of the Case/Reason for hunger strike

He was done a surgery which had a complication which was not adequately treated. The prisoner is a disabled person (he does not have a part of the leg, from lower knee, but his disability was not formally recognized.). Yet, he suffers from chronic Burger's disease which requires a special treatment that he does not receive.

2.3.Result: On 27.12.2011. the prisoner was transferred to a special prison hospital in Belgrade. At that occasion he was not explained the reason for which he was sent there, nor there was acute worsening of his medical condition.

2.4.Legal grounds of prisoner's request:

Law on the Enforcement of Criminal Sanctions: Articles 65, 101-105
Rulebook on House Rules: 32, 33

3. N.P. Penitentiary Niš, personal identification number 6182

3.1.1. Letter to the Head of Health Care Service for not applying adequate post-surgery treatment (29.08.2011.)

Reply to Request:	Not received
Date of Reply:	-
Is the reply received within deadline:	(deadline is 5 days)
Explanation from the written reply:	-
Other:	-

3.2.Specificity of the Case/Reason for hunger strike

Lack of adequate post-surgery treatment (his testicles were operated in Clinical Center Niš) which lead to the worsening of health care condition of the prisoner because it required regular taking out of Penitentiary for treatment.

3.3. Result: In order to start the procedure of the fulfillment of right to health care protection, the prisoner submitted a request and later urgency for the issuing of the extract from medical file. Bearing in mind that copies of medical reports were not delivered, prisoner's attorney wrote urgency to the Head of medical service with a request that the extracts from files are to be delivered until the visit to the prisoner on 22.07.2011.

The procedure will start upon the providing of medical file. After the urgency of the attorney, medical files were delivered to the prisoner who submitted them to the attorney.

In November the prisoner gave up the further procedure aimed at realization of this right.

3.4. Legal grounds of prisoner's request:

Law on the Enforcement of Criminal Sanctions: 65, 101-105
Rulebook on House rules: 32, 33

4. B.K. Penitentiary Niš, personal identification number 8638

4.1.1. Request to the Head of Health Care Service for the Provision of Medical File Copy (15.12.2011.)

Reply to Request: Not received

Date of Reply: -

Is the reply received within deadline: -

Explanation from the written reply: -

Other: -

4.1.2. Complaint to the Head for disabling insight in medical file (06.02.2012.)

Reply to Request: Negative

Date of Reply: 27.02.2012.

Is the reply received within deadline: Deadline for replying on the complaint is 15 days from the day of receiving.

Explanation from the written reply: "... it was determined that there were no omissions in the work of state officers. Bearing in mind that copying machine in Penitentiary Niš has been out of work for a long time, for technical reasons, at the moment there is no possibility to copy the required medical documentation. Required medical documentation will be delivered to the named person when technical abilities allow, i.e. when the copying machine is repaired."

Other: -

4.1.3. Claim filed to the Head of Directorate related to the decision brought by the Head of Penitentiary Niš (02.03.2012.)

Reply to Request: Not received

Date of Reply: -

Is the reply received within deadline: -

Explanation from the written reply: -

Other: -

4.2. Specificity of the Case/Reason for hunger strike

The prisoner suffers from diabetes for which he receives insulin therapy which does not give effects and it is necessary to provide for adequate treatment.

4.3.Result: -

4.4.Legal grounds of prisoner's request:

Law on the Enforcement of Criminal Sanctions: Articles 65, 101-105
Rulebook on House rules: 29. paragraph 4, 32, 33

TOTAL:

a. Submitted:

- **Basic documents:**

Complaint to the Head of Health Care Service for inappropriate medical care: 3
Request to the Head for the provision of the Copy of Medical File: 1

- **Complaints to decision on basic document:**

Complaint to the Head for not receiving replies: 2

Complaint to Medical Chamber: 2

Complaint to the Director of Directorate: 1

Total: 9

b. Received replies:

Total replies: 3

Total positive replies 1st instance: 0
Total negative replies 1st instance: 0

Total positive replies 2nd and higher instance: 0
Total negative replies 2nd and higher instance: 3

Total replied within deadline: 1
Total not replied within deadline: 4
For others there is no deadline

IV/ Procedure of lodging complaint related to inappropriate classification as well as treatment program, deriving from inappropriate category

Legal Grounds: Law on the Enforcement of Criminal Sanctions, Article 63

1. I.N. Penitentiary Sremska Mitrovica, personal identification number 12324

1.1.1. Complaint to the Head of Penitentiary Sremska Mitrovica for unjustified reduction of treatment group (01.11.2011)

Reply to Request: Negative

Date of Reply: 02.12.2011.

Is the reply received within deadline: Yes

Explanation from the written reply: Law on the Enforcement of Criminal Sanctions and Rulebook on treatment, treatment program, classification: " …there is no obligation of the institution to which the prisoner is transferred, to maintain the awarded group and granted special rights within group. "

Other: -

1.1.2. Claim filed to the Director of Directorate related to the decision brought by the Head of Penitentiary S.Mitrovica from 02.12.11. (12.12.2011)

Reply to Request: Positive

Date of Reply: 23.01.2012.

Is the reply received within deadline: No, legal deadline is one month

Explanation from the written reply: ``Upon consideration of the list of acts in this administrative issue, evaluation of the statements in the claim and opinion of the institution based on it, second instance organ finds that the claim is justified…
... Explanation of the Head's decision is unclear, facts related to circumstances of the claim that relate to the acquired special rights are not determined, i.e. whether there are decisions of the institution on awarding, i.e. denial of special rights"

Other: *On 02.03.2012 Head of Penitentiary Sremska Mitrovica brought a decision by which the claim was formally rejected. Essentially the claim was accepted because from the explanation (" based on the evidence the facts that have character of decisive facts for decision making in this legal subject are made undeniable, and the same ones direct to a conclusion that the claim was ungrounded. Namely, on 02.03.2012, expert team of the Penitentiary subsequently classified the prisoner in group V1 and awarded him appropriate special rights") it is obvious that expert team of the Penitentiary subsequently classified the prisoner in group V1 and awarded him appropriate special rights.

1.3.Result: The prisoner was given back his category and commodities that derive from it.

1.4.Legal grounds of prisoner's request:

Law on the Enforcement of Criminal Sanctions: 63
Rulebook on treatment and treatment program: 35

TOTAL:

a. Submitted:

- **Basic documents:**

Complaint to the Head for awarding the group with lesser rights: 1

- **Claims to the decision on basic document:**

Claim to Director of Directorate: 1

Total: 2

b. Received replies:

Total replies: 3

Total positive replies 1st instance: 0
Total negative replies 1st instance: 2

Total positive replies 2nd and higher instance: 1
Total negative replies 2nd and higher instance: 0

Total replied within deadline: 1
Total not replied within deadline: 1
For others there is not deadline

V/ Complaints related to discrimination of prisoners with disability

Legal Grounds: Law on abolishment of discrimination of disabled persons, Law on the Enforcement of Criminal Sanctions, Article 66

1. Group of disabled prisoners accommodated in the hospital in Penitentiary Zabela (N.A. personal identification number33292, S.M. personal identification number3391, I.N. personal identification number 3824, S.Z., V.M. m.b.3745)

1.1.1. Complaint to the Head of Penitentiary Zabela for non-realization of rights of disabled persons with a request for removal of architectural barriers within the hospital and request for ensuring accommodation on the ground floor of the hospital (23.08.2011.)

Reply to Request: Not received

Date of Reply: -

Is the reply received within deadline: (deadline is 15 days)

Explanation from the written reply: -

Other: No reply to the submission was received, however, works on adaptation of the premises on the ground floor of the hospital according to the needs of disabled persons were started.

1.2. Specificity of the Case/Reason for hunger strike

Here it is about prisoners- persons with special needs that are accommodate in inhumane conditions, in the building of the hospital that does not satisfy their needs. The prisoners are accommodated on the 1st floor of the building without elevator which makes their moving more difficult. Besides that, there are no ramps at the entrances of the building.

1.3.Result: Prisoners- disabled persons, were, after adaptation accommodated on the ground floor. However they were deprived of a personal assistant (one of the prisoners who voluntarily helps them) which again makes them helpless, in a different way.

1.4.Legal grounds of prisoner's request:

Law on the Abolishment of Discrimination of Persons with Disabilities
Law on the Enforcement of Criminal Sanctions: 66

TOTAL:

a. Submitted:

- **Basic documents:**

Complaint to the Head for non-realization of rights of disabled persons and request for removal of architectural barriers:1

- **Claims on the decision on the basic document: 0**

Total: 1

b. Received replies:

Total replies: 0

Total replied within deadline: 0
Total not replied within deadline: 1

VI/ Requests to the heads, Other

1.V.R. Penitentiary S. Mitrovica, personal identification number 5081

1.1.1. Urging to the Head of Penitentiary for urgent determining of facts on guilt in disciplinary procedure (07.03.2011.)

Reply to Request: Not received

Date of Reply: -

Is the reply received within deadline: No deadline

Explanation from the written reply: -

Other: Deadline for acting upon this submission does not exist, but determination of all the facts related to disciplinary procedure it was necessary to be done until the bringing of the Decision on disciplinary punishing.

1.2.Specificity of the Case/Reason for hunger strike

In the procedure against the prisoner no statements of the defendant were investigated nor were the suggested evidence derived. Disciplinary procedure was initiated because the urine test of the prisoner was positive to psycho-active substances. The prisoner states that it was not, but that he was taking cafetine (a medicine) and for that reason he asked for the blood test to be done as well, so as to prove his statement.

1.3. Result: **-**

1.4. Legal grounds of prisoner's request:

Violation of prisoner's right to defend in disciplinary procedure in Penitentiary – Article 158 Law on the Enforcement of Criminal Sanctions and
Article 14 of the Rulebook on disciplinary measures and offences towards prisoners

TOTAL:

a. Submitted:

- **Basic documents:**

Urging to the Head of Penitentiary for urgent determining of facts on guilt: 1

- **Claims to the decision on basic document: 0**

Total: 1

b. Received replies:

Total replies: 0

Total replied within deadline: 0
Total not replied within deadline: 0
There is no legal deadline for the reply

VII/ Rarities – prisoners from ex-YU territory

1. D.S. Penitentiary Niš, personal identification number 7912

Specificity of the Case/Reason for hunger strike

The prisoner is a person without citizenship (apatrid). At the moment of the attorney's visit he had a proof from Niš City Administration that he was not registered in the Book of Citizens of Serbia.

The following was done:

A request for determination whether the prisoner had the Slovenian or any other country citizenship was sent to Slovenian Embassy, and further guidelines for the procedure of getting citizenship were required (17.01.2012.) The reply from 21.02.2012, states that the prisoner did not have Slovenian citizenship, but that in 1985 he was registered in the Birth Book in Celje as a citizen of SFRJ from the Republic of Serbia.

2. M.M. personal identification number 522, Penitentiary Sremska Mitrovica

Specificity of the Case/Reason for hunger strike

The prisoner serves the sentence based on the verdict of the District Court in Beli Manastir, confirmed by the verdict of Supreme Court of Vukovar, Republic of Srpska Krajina. Without any decision he was sent to sentence serving to Penitentiary Sremska Mitrovica (in Serbia). The procedure of acknowledgement of this verdict in Serbia was never initiated which is a necessary condition for sentence serving by persons from other countries.

What was done:

Contact with the Embassy of the Republic of Croatia was established and information and legal aid were required aimed at the repeal of the verdict that the prisoner served. The received answer was: " The verdicts of Para-State Republic of Srpska Krajina do not have legal effect for the reason that in Croatia a Law on the abolishment was brought which annuls all the verdicts of these courts."

From the Constitutional Court of Serbia information was received that the procedure in that Court was initiated in April 2011. Request for delivery of copies of verdicts according to which the prisoner serves the sentence was sent to Penitentiary Sremska Mitrovica on 16.01.2012. No written reply for this request was received, but the verbal one (beginning of February) from an employee in the Directorate-that Penitentiary Sremska Mitrovica would not satisfy this request because there was not legal obligation for that.

The prisoner submitted the Confirmation of the County Court un Osijek from 20.09.2010. where it says that it was not defined whether penal procedure had ever been lead against him and that for that reason they were not able to provide a copy of the verdict by which he was sentenced.

VIII/ Submissions which are not submitted for justified reason

1. Z.M. Penitentiary Zabela, personal identification number 4252

Specificity of the Case/Reason for hunger strike

The prisoner is a disabled person which needs orthopedic aid (adequate shoes with platform) so that he could move normally. Penitentiary verbally refused to provide the prisoner with appropriate aid.

Result:

Prisoner's problem was that he could not get the orthopedic aid - (one leg was shorter for 5cm). Three days after the visit the prisoner informed the lawyer of the Center for Human Rights Niš that the procedure of purchase of orthopedic aid was initiated in Penitentiary and later that the problem was solved.

2. Z.B. Penitentiary Niš, personal identification number 4956

Specificity of the Case/Reason for hunger strike

The prisoner is a disabled war soldier. He was diagnosed with post-traumatic stress disturbance (DSM IV F10), claustrophobia, psychopath signs of behavior, which are all consequences of the participation in the war. Legally, he has two possibilities: (a) to have the status of disabled worker acknowledged (if he had enough years of service) (b) or to have the status of disabled war soldier acknowledged, and to receive, based on that a fee for disabled war soldiers via municipality. He chose the status of disabled worker. At the moment of the visit of the attorney his problem was that he submitted the request for disabled retirement fee and he received an answer that he missed two months of service (instead of needed 5 years he has 4 years and 10 months).

Result:

Soon after the attorney's visit the prisoner informed the attorney that he solved the problem (a bank approved a loan in the amount of 55.000 dinars to pay for contributions for missing months) and that he would soon get the decision on the acknowledgment of the disabled retirement fee.

IX/ Representation in the courts in criminal procedures *

*not planned by the project, but, due to the evident violation of human rights, these prisoners were represented in the court.

1. Dž.S. Penitentiary Sremska Mitrovica, personal identification number 10143 (in August 2011. he was transferred to detention in Penitentiary Zabela)

Proposal for repeating criminal procedure in which the prisoner was tried in absentia was submitted to Basic Court in Požarevac, 06.04.2011. and positive reply was received (11.07.2011, the reply was within deadline) by the verdict according to which the prisoner was serving sentence was annulled.

Upon the bringing of this decision, the prisoner was determined detention immediately, which was realized to Penitentiary Zabela. Head of Penitentiary Sremska Mitrovica was sent a notification about the positive reply on 28.07.2011. with a request to take measures in order to stop the realization of the sentence towards the prisoner. The appeal to Appellation Court against the decision of the Basic Court in Požarevac by which the detention to the prisoner was determined was sent on 25.08.2011. Appellation Court rejected the appeal on 16.09.2011.

Specificity of the Case/Reason for hunger strike

The defendant was tried in absentia ("unavailable to prosecution organs") although, at that moment, he was serving another sentence in Penitentiary Sremska Mitrovica, which made him surely available.

The only proof based on which the verdict was brought was the statement of the defendant given in pre-criminal procedure. After the arrest he was questioned without the presence of the defense (attorney) when he was beaten, which is confirmed by a report from the doctor from Maxio Facial Surgery. In that way previously created statement he formally gave letter, in the presence of the attorney (defence). In this procedure no other evidence was found based on which the sentence could be based. Based on S.'s statement, supported by the report from Maxio Facial Surgery in Belgrade, he admitted the crime after he was beaten by the Police. Additional thing that makes the things even harder for the prisoner is that he is a member of Roma minority group for which there is a stereotype that they deal with criminal acts.

2.D.P. Penitentiary Sremska Mitrovica, 8261

Request for unjustified repeating of the procedure was sent to a High Court in Belgrade 13.01.2011. On 21.03.2011 High Court brought a decision by which it rejected this request.

Basic Court in Novi Sad, on 27.01.2011. brought a decision by which the clause on the validity of the decision of Basic Court in Novi Sad from 20.10.2010. was put out of force (by this decision prisoner's sentence serving was ceased). Appeal on this Decision from 27.01. was lodged to Appellation Court in Novi Sad on 04.03.2011. Appellation Court rejected this Appeal on 25.10.2011. For the decision of Basic Court in Novi Sad from 17.03.2011. by which it was rejected, the appeal was previously lodged to Appellation Court in Novi Sad on 20.04.2011 (amendment to appeal was lodged on 10.05.2011.). This Court approved the appeal on 23.05.2011.and abolished the decision of Basic Court in Novi Sad from 17.03.2011.

Specificity of the Case/Reason for hunger strike

Basic Court in Novi Sad was not allowed to decide on the obsolescence of one of his sentences (and it brought), because that penalty was already covered by a joint sentence brought by the High Court in Belgrade. The rights that are obtained based on final judgments are vested rights that can not be denied later and this right was denied to him.

C/ Reasons for hunger strike

(Transfer)

1. I.N. Penitentiary Niš – ID number 7007

1.1. Specificity of the case/reasons for hunger strike

A prisoner is a resident of Kosovo and Metohia. He wants to be transferred back to Kosovo so as to serve his prison sentence (until 2021) in a prison which is closer to the place of residence of his family. Geographic distance and other problems (primarily poverty of his family) influence that the prisoner has difficulties in realizing rights deriving from the Law on the Enforcement of Criminal Sanctions and which are covered by the European Prison Rules. Here it is primarily about the impossibility to realize the right to visits by a family due to the long distance from their place of residence and high costs of travel and accommodation. Political circumstances are such that the probability for the positive solution of his request would be much higher if he was Albanian and if he wanted to be transferred to Kosovo or if he was a Serbian from Kosovo who wanted to be transferred to some prison in Serbia. In such constellation, a Serbian who wants to go to a prison in Kosovo, under Albanian control, he faced the lack of political will and support of all the actors in solving these circumstances, to be given, as an individual, a possibility to respect one of the rights related to sentence serving, and whose respect primarily contributes to his better re-socialization (closeness and good contacts with his family)

1.2. Legal grounds for prisoner's request:

- European Prison Rules (Rule 17.1)
  Law on the Enforcement of Criminal Sanctions: (**Article 78**
  Every prisoner is entitled to receive visits of the spouse, children, parents, adopted children, adoptive parents and other lineal relatives or lateral relatives to fourth degree of consanguinity, as well as by foster parent, foster child and guardian.
  1) once a week - in penitentiary or open type section;
  2) twice a month - in penitentiary or semi-open type section;
  3) once a month – in penitentiary or a closed type section and in closed type penitentiary with special security
- Head of Penitentiary may allow a prisoner to be visited by other persons, as well.
  Article 116: Upon the request of a prisoner or recommendation of the Head of Penitentiary, and where there are justifiable reasons to do so, the Director of Directorate may transfer a prisoner from one institution to another.
  The Director of Directorate may for security reasons transfer a prisoner *ex officio*.
  A prisoner may appeal against the decision of the Director of Directorate referred to under paragraphs 1 and 2 of this Article to the minister in charge of the judiciary, within three days of the delivery of the decision. Appeal against the decision of Director of Directorate does not delay the enforcement of the Decision.
  Article 117: The penal institution where a prisoner has been transferred shall enable the prisoner to inform at once his family or another person of his own choice of transfer to another institution at the expense of the institution.)

2. A.S. Penitentiary Niš, ID number 5178

2.1. Specificity of the case/reasons for hunger strike

Prisoner's problem is related to revanchism by a member of security service. The reason of such behavior is, based on prisoner's opinion, laying in his previous successful escape from the field department of the Penitentiary (in Pirot) when one Security Staff member was fired.

2.2. Legal grounds for prisoner's request:

Law on the Enforcement of Criminal Sanctions
(**Article 65:** Everyone must respect the dignity of a prisoner.
No one may endanger physical and mental health of a prisoner.)

3. D.B. Penitentiary Niš, ID number 7514

3.1. Specificity of the case/reasons for hunger strike

Inadequate treatment of the prisoner after which he injured himself and after which he was assigned to a Department under special surveilance in Penitentiary Niš. Until the transfer he injured himself as a consequence of mental pressure to which he was subjected by the security staff to admit that he wanted to get the means for the escaper from Penitentiary Niš.

Watering pipe, made of parts each 1-1.5 m long, confiscated from another prisoner, intended for D.B. to water the garden, and was interpreted by the Security service as a planning of the escape. Based on his statement, that is why the guards questioned him for an hour or two, with accusation that he planned the escape which he experienced as a huge mental pressure under which he broke and in one moment injured himself with a carving tool. The prisoner was not previously disciplinary punished, practices gardening and carving and it meant a lot to him. Because of self-injuring act the prisoner was later punished in disciplinary procedure. The procedure for escape planning has never been initiated.

3.2. Legal grounds for prisoner's request:

Law On The Enforcement Of Criminal Sanctions

Article 65: Everyone must respect the dignity of a prisoner.
No one may endanger physical and mental health of a prisoner
Article 116: Upon the request of a prisoner or recommendation of the Head of Penitentiary, and where there are justifiable reasons to do so, the Director of Directorate of Prison Administration may transfer a prisoner from one institution to another.
The Director of Directorate may for security reasons transfer a prisoner *ex officio*.
A prisoner may appeal against the decision of the Director of Directorate referred to under paragraphs 1 and 2 of this Article to the Minister in charge of the judiciary, within three days of the delivery of the decision. Appeal against the decision of Director of Directorate does not delay the enforcement of the Decision.
Article 139: Placing under increased supervision may be applied only in closed-type institutions and/or closed type sections of penitentiary,
A prisoner is entitled to appeal the decision on placing under increased supervision within three days of receiving the decision. The appeal does not delay enforcement of the decision.
The measure specified in paragraph 1 of this Article is reconsidered every three months. The decision on extension of this measure may be appealed by the prisoner within three days of receiving the decision. The appeal does not delay the enforcement.

- The purpose of imprisonment in a part of the conduction of treatment program (a prisoner, as a mentally labile person recognizes this penitentiary as an enemy environment from this moment on; until the incident the program of his re-socialization was successfully implemented)

4. F.G. Penitentiary Zabela, ID number 2979

4.1. Specificity of the case/reasons for hunger strike

The prisoner is a Muslim. There are only a few prisoners of this confession in Penitentiary Zabela and they are not enabled to have adequate diet that satisfies religious requests and he has difficulties in performing religious rituals. As well, due to the long distance from his place of residence (Novi Pazar) his family rarely visits him.

4.2. Legal grounds for prisoner's request:

- **Law on the Enforcement of Criminal Sanctions** (**Article 70, paragraph 3**: …. Prisoner is secured diet taking care of his religious beliefs and according to the possibilities of the Penitentiary.
Article 78: Every prisoner is entitled to receive visits of the spouse, children, parents, adopted children, adoptive parents and other lineal relatives or lateral relatives to fourth degree of consanguinity, as well as by foster parent, foster child and guardian.
1) once a week - in penitentiary or open type section;
2) twice a month - in penitentiary or semi-open type section;

3) once a month – in penitentiary or a closed type section and in closed type penitentiary with special security.

- Head of Penitentiary may allow a prisoner to be visited by other persons, as well.

Article 113: Every prisoner has the right to:
1) practice religious rituals;
2) read religious literature;
3) receive visits of religious representative.
If the institution contains a sufficient number of prisoners of the same religion, the Head of Penitentiary shall upon their request allow a qualified representative of that religion to visit them regularly or to hold regular services or lectures at the institution.
No pressure may be exerted on a prisoner to attend a religious service or a visit of the religious representative.
Religious service is held in special and appropriate premises of the institution.
The House Rules shall more precisely define time, duration and manner of exercising the right specified under this Article.)

5. Z.B. Penitentiary Niš, ID number 7090

5.1. Specificity of the case/reasons for hunger strike

In 2007 the prisoner was temporarily transferred to Penitentiary Nis, during the works in Penitentiary Mitrovica and has been there until now. He requires to be transferred back to Sremska Mitrovica. His family lives in Bački Petrovac and due to extremely bad material status it practically has no possibility to visit him, because the distance from Niš exposes them to too big expanses.

5.2. Legal grounds for prisoner's request:

Law on the Enforcement of Criminal Sanctions (Article 78: Every prisoner is entitled to receive visits of the spouse, children, parents, adopted children,
adoptive parents and other lineal relatives or lateral relatives to fourth degree of consanguinity, as well as by foster parent, foster child and guardian.
1) once a week - in penitentiary or open type section;
2) twice a month - in penitentiary or semi-open type section;
3) once a month – in penitentiary or a closed type section and in closed type penitentiary with special security

- Head of Penitentiary may allow a prisoner to be visited by other persons, as well).

(Complaints to the Head because of inadequate accommodation in Penitentiary)

6. M.I. District Prison Leskovac, 333/11

6.1. Specificity of the case/reasons for hunger strike

The prisoner is accommodated in a closed part of the semi-opened type prison which violates his right to appropriate accommodation bearing in mind the group in which he is classified. Due to inappropriate accommodation, right to stay out of the cell, right to exercises in the open air as well as the right to free activities (walk, gym, chess, social games....) is violated.

6.2. Legal grounds for prisoner's request:

Law on the Enforcement of Criminal Sanctions (Article 66: A prisoner is entitled to accommodation corresponding to contemporary hygiene requirements, and local climate.
Prisoner shall be assigned to common rooms and dormitories based on a careful analysis of all circumstances and information recorded in the admission ward, particularly taking into account the age, personal characteristics and interests as well as other features important for positive interaction between the prisoners and elimination of risk of mutual physical or mental endangerment.

- A prisoner with special needs is entitled to accommodation in line with the type and degree of his needs.

Article 68: A prisoner is entitled to spend at least two hours each day in the open air during leisure time.
A prisoner of suitable age and physique is entitled to organized physical activity during leisure time,
including the right to use sports facilities, devices and equipment together with other prisoners.

7. K.D. District Prison Leskovac, 372/11

7.1. Specificity of the case/reasons for hunger strike

The prisoner is accommodated in a closed part of the semi-opened type prison which violates his right to appropriate accommodation bearing in mind the group in which he is classified (admitted to sentence serving voluntarily, before the validity of the verdict, for which reason he is supposed to be accommodated in semi-opened part where prisoners have possibilities to enjoy more commodities, not in the closed part). Due to inappropriate accommodation, right to stay out of the cell, right to exercises in the open air as well as the right to free activities (walk, gym, social games....) is violated.

7.2. Legal grounds for prisoner's request:

Law on the Enforcement of Criminal Sanctions (**Article 63:** Upon entering the institution a prisoner is sent to the admission ward.
A prisoner may stay maximum thirty days in this ward.
In the admission ward, information is collected about the personality of a prisoner, aimed at his assignment and drawing up of a correctional program.
Assignment of prisoners is based on the type of criminal offence, length of sentence, guilt, attitude of the prisoner to the offence, prior criminal record and other criteria set out in the Rulebook on treatment, treatment program, assignment and subsequent assignment of prisoners.
During serving of sentence it is possible to subsequent assign (reclassify) a prisoner to another treatment group in respect of achieving the purpose of enforcement of sanction, or change the correctional program if necessary. Expert team consists from the representatives of Penitentiary services.
Decision on treatment program and decision on subsequent classification is delivered to the prisoner in maximum three days from bringing a decision.
A prisoner may appeal against the decision on subsequent assignment to Director of Directorate within three days from receiving the decision.
Rulebook on treatment, treatment program, assignment and subsequent assignment of prisoners is brought by the Minister in charge of juridiciary.
Article 66: A prisoner is entitled to accommodation corresponding to contemporary hygiene requirements, and local climate.
Prisoner shall be assigned to common rooms and dormitories based on a careful analysis of all circumstances and information recorded in the admission ward, particularly taking into account the age, personal characteristics and interests as well as other features important for positive interaction between the prisoners and elimination of risk of mutual physical or mental endangerment.

- A prisoner with special needs is entitled to accommodation in line with the type and degree of his needs.

Article 68: A prisoner is entitled to spend at least two hours each day in the open air during leisure time.
A prisoner of suitable age and physique is entitled to organised physical activity during leisure time, including the right to use sports facilities, devices and equipment together with other prisoners).

(Submissions in relation to the fulfillment of right to health care)

8. M.K. Penitentiary Niš, ID number 8216

8.1. Specificity of the case/reasons for hunger strike

The prisoner is 1st category disabled worker suffering from numerous chronic diseases (heart problems, spine problems, epilepsy...) for which he does not receive prescribed therapy and treatment, As well, his glasses have been broken for a while and he does not manage to be taken to ophthalmologist so as to get new ones.

8.2. Legal grounds for prisoner's request:

Law on the Enforcement of Criminal Sanctions (**Article 65:** Everyone must respect the dignity of a prisoner.
No one may endanger physical and mental health of a prisoner)

Article 101: A prisoner is entitled to medical care pursuant to general regulations on medical protection and provisions of this law.
Prisoners who cannot receive adequate medical treatment within the institution shall be transferred to the Special Prison Hospital or other health institution, and pregnant women to a maternity ward for childbirth.
Time spent on medical treatment shall be calculated as the time of imprisonment.
Article 102: Medical treatment of a prisoner is conducted with his agreement.
Forced feeding of prisoner is not allowed.
Exceptionally, if a prisoner seriously impairs his health or life by refusal of medical treatment or food, medical measures shall be applied as determined by a doctor.
A medical examination of a prisoner is conducted only in presence of a medical officer, unless the medical officer requests otherwise.
A prisoner has the right to be informed of the findings regarding his health and the content of his medical file, except in cases provided by general medical regulations.
A prisoner shall have access to services of a dentist.
There may be established a special ward for quitting psycho-active substances.
More detailed regulations on the work and conduction of program for quitting psycho-active substances is brought by the Minister in charge of justice.
Article 103: The doctor in the institution is required to:
1) examine every prisoner immediately upon admittance into the institution, after return from a temporary leave and before release from the institution;
2) at admittance to the institution and subsequently, whenever appropriate, determine whether the prisoner is physically and mentally ill and his/her work capacity;
3) examine without delay a prisoner complaining of illness or if indications of an illness are present;
4) daily examine a prisoner who is ill or refuses food or water, and regularly, in intervals not longer than three months, other prisoners;
5) control accommodation, nutrition, hygiene, sanitary and other conditions impacting on the health of prisoners;
6) keep separate records of injuries of prisoners and inform the Head of Penitentiary about any sign or indication that the prisoner is ill treated;
7) supervise the work of pharmacy and medical staff recording, issuing and giving the prescribed therapy to a prisoner.
The doctor in the institution shall submit to the Head of the prison in writing:
1) periodical reports on the health of prisoners;
2) a report whenever he determines that the physical or mental health of a prisoner has been impaired or compromised due to extension or the manner of serving of sentence and shall recommend measures for treatment of such person, including possible suspension of serving of sentence;
3) findings and recommendations on the quantity and quality of food for prisoners;
4) findings and recommendations for improving hygiene in the institution and of prisoners, state of sanitary facilities and conditions, heating, lighting and ventilation in premises where prisoners are confined;
5) findings and recommendations relating to necessary physical activity of prisoners;
6) The Head is required to promptly undertake measures specified in paragraph 2 of this Article that are recommended by the doctor
Article 104: Article 104: Upon the request of a prisoner, the Head of Penitentiary may allow him to be examined by a specialist if the doctor failed to suggest such examination.
The prisoner then bears the costs of examination, unless the Head of Penitentiary decides otherwise.
Article 105: Regarding serious health impairment or life of a prisoner, or his transfer to the prison hospital or other medical institution, the penal institution shall promptly inform their spouse, children, adopted children or a person with whom the prisoner lived in a common-law marriage or other form of permanent relationship if any, otherwise the institution shall inform his parents, adoptive parents, brother or sister or other relatives.

- Rulebook on House Rules (**Article 32**: A doctor prescribes therapy and organizes the manner of issuing, giving and recording it.
- The doctor prescribes which medicines a prisoner may have with himself.
  Article 33: Upon the approval of the doctor in Penitentiary, a prisoner may purchase medicine and orthopedic aids at his own expense or to receive them from family members of close persons.)

9. M.V. Penitentiary Niš, ID number 9126

9.1. Specificity of the case/reasons for hunger strike

The prisoner complaints to the lack of medical care. Namely, although being a disabled person (he does not have a part of the leg from the lower knee) and he does not have formally recognized ability, he does not have a personal assistant, does not receive appropriate medicines, primarily for nervous system. As well, he states that he got stomach hernia, after the kidney surgery which is not treated in Penitentiary Niš. The prisoner suffers from chronic Burger's disease which requires a special

treatment that he does not receive. At one occasion he fell in the hall of the prison hospital, but there were no medical technicians to help him stand up. He was lying like that for a longer time.

9.2. Legal grounds for prisoner's request:

Law on the Enforcement of Criminal Sanctions (**Article 65:** Everyone must respect the dignity of a prisoner.
No one may endanger physical and mental health of a prisoner)
Article 101: A prisoner is entitled to medical care pursuant to general regulations on medical protection and provisions of this law.
Prisoners who cannot receive adequate medical treatment within the institution shall be transferred to the Special Prison Hospital or other health institution, and pregnant women to a maternity ward for childbirth.
Time spent on medical treatment shall be calculated as the time of imprisonment.
Article 102: Medical treatment of a prisoner is conducted with his agreement.
Forced feeding of prisoner is not allowed.
Exceptionally, if a prisoner seriously impairs his health or life by refusal of medical treatment or food, medical measures shall be applied as determined by a doctor.
A medical examination of a prisoner is conducted only in presence of a medical officer, unless the medical officer requests otherwise.
A prisoner has the right to be informed of the findings regarding his health and the content of his medical file, except in cases provided by general medical regulations.
A prisoner shall have access to services of a dentist.
There may be established a special ward for quitting psycho-active substances.
More detailed regulations on the work and conduction of program for quitting psycho-active substances is brought by the Minister in charge of justice.
Article 103: The doctor in the institution is required to:
1) examine every prisoner immediately upon admittance into the institution, after return from a temporary leave and before release from the institution;
2) at admittance to the institution and subsequently, whenever appropriate, determine whether the prisoner is physically and mentally ill and his/her work capacity;
3) examine without delay a prisoner complaining of illness or if indications of an illness are present;
4) daily examine a prisoner who is ill or refuses food or water, and regularly, in intervals not longer than three months, other prisoners;
5) control accommodation, nutrition, hygiene, sanitary and other conditions impacting on the health of prisoners;
6) keep separate records of injuries of prisoners and inform the Head of Penitentiary about any sign or indication that the prisoner is ill treated;
7) supervise the work of pharmacy and medical staff recording, issuing and giving the prescribed therapy to a prisoner.
The doctor in the institution shall submit to the Head of the prison in writing:
1) periodical reports on the health of prisoners;
2) a report whenever he determines that the physical or mental health of a prisoner has been impaired or compromised due to extension or the manner of serving of sentence and shall recommend measures for treatment of such person, including possible suspension of serving of sentence;
3) findings and recommendations on the quantity and quality of food for prisoners;
4) findings and recommendations for improving hygiene in the institution and of prisoners, state of sanitary facilities and conditions, heating, lighting and ventilation in premises where prisoners are confined;
5) findings and recommendations relating to necessary physical activity of prisoners;
6) The Head is required to promptly undertake measures specified in paragraph 2 of this Article that are recommended by the doctor
Article 104: Article 104: Upon the request of a prisoner, the Head of Penitentiary may allow him to be examined by a specialist if the doctor failed to suggest such examination.
The prisoner then bears the costs of examination, unless the Head of Penitentiary decides otherwise.
Article 105: Regarding serious health impairment or life of a prisoner, or his transfer to the prison hospital or other medical institution, the penal institution shall promptly inform their spouse, children, adopted children or a person with whom the prisoner lived in a common-law marriage or other form of permanent relationship if any, otherwise the institution shall inform his parents, adoptive parents, brother or sister or other relatives.

- Rulebook on House Rules (**Article 32**: A doctor prescribes therapy and organizes the manner of issuing, giving and recording it.
- The doctor prescribes which medicines a prisoner may have with himself.
  Article 33: Upon the approval of the doctor in Penitentiary, a prisoner may purchase medicine and orthopedic aids at his own expense or to receive them from family members of close persons.)

10. N.P. Penitentiary Niš, ID number 6182

10.1. Specificity of the case/reasons for hunger strike

Lack of appropriate post-surgery treatment (his testicles were operated in Clinical Center Niš) which implied regular taking out of the Penitentiary for a treatment, led to the worsening of his medical condition and returning to a problem for which he was operated.

10.2. Legal grounds for prisoner's request:

Law on the Enforcement of Criminal Sanctions (**Article 65:** Everyone must respect the dignity of a prisoner.
No one may endanger physical and mental health of a prisoner)
Article 101: A prisoner is entitled to medical care pursuant to general regulations on medical protection and provisions of this law.
Prisoners who cannot receive adequate medical treatment within the institution shall be transferred to the Special Prison Hospital or other health institution, and pregnant women to a maternity ward for childbirth.
Time spent on medical treatment shall be calculated as the time of imprisonment.
Article 102: Medical treatment of a prisoner is conducted with his agreement.
Forced feeding of prisoner is not allowed.
Exceptionally, if a prisoner seriously impairs his health or life by refusal of medical treatment or food, medical measures shall be applied as determined by a doctor.
A medical examination of a prisoner is conducted only in presence of a medical officer, unless the medical officer requests otherwise.
A prisoner has the right to be informed of the findings regarding his health and the content of his medical file, except in cases provided by general medical regulations.
A prisoner shall have access to services of a dentist.
There may be established a special ward for quitting psycho-active substances.
More detailed regulations on the work and conduction of program for quitting psycho-active substances is brought by the Minister in charge of justice.
Article 103: The doctor in the institution is required to:
1) examine every prisoner immediately upon admittance into the institution, after return from a temporary leave and before release from the institution;
2) at admittance to the institution and subsequently, whenever appropriate, determine whether the prisoner is physically and mentally ill and his/her work capacity;
3) examine without delay a prisoner complaining of illness or if indications of an illness are present;
4) daily examine a prisoner who is ill or refuses food or water, and regularly, in intervals not longer than three months, other prisoners;
5) control accommodation, nutrition, hygiene, sanitary and other conditions impacting on the health of prisoners;
6) keep separate records of injuries of prisoners and inform the Head of Penitentiary about any sign or indication that the prisoner is ill treated;
7) supervise the work of pharmacy and medical staff recording, issuing and giving the prescribed therapy to a prisoner.
The doctor in the institution shall submit to the Head of the prison in writing:
1) periodical reports on the health of prisoners;
2) a report whenever he determines that the physical or mental health of a prisoner has been impaired or compromised due to extension or the manner of serving of sentence and shall recommend measures for treatment of such person, including possible suspension of serving of sentence;
3) findings and recommendations on the quantity and quality of food for prisoners;
4) findings and recommendations for improving hygiene in the institution and of prisoners, state of sanitary facilities and conditions, heating, lighting and ventilation in premises where prisoners are confined;
5) findings and recommendations relating to necessary physical activity of prisoners;
6) The Head is required to promptly undertake measures specified in paragraph 2 of this Article that are recommended by the doctor
Article 104: Article 104: Upon the request of a prisoner, the Head of Penitentiary may allow him to be examined by a specialist if the doctor failed to suggest such examination.
The prisoner then bears the costs of examination, unless the Head of Penitentiary decides otherwise.
Article 105: Regarding serious health impairment or life of a prisoner, or his transfer to the prison hospital or other medical institution, the penal institution shall promptly inform their spouse, children, adopted children or a person with whom the prisoner lived in a common-law marriage or other form of permanent relationship if any, otherwise the institution shall inform his parents, adoptive parents, brother or sister or other relatives.

- Rulebook on House Rules (**Article 32**: A doctor prescribes therapy and organizes the manner of issuing, giving and recording it.
- The doctor prescribes which medicines a prisoner may have with himself.
  Article 33: Upon the approval of the doctor in Penitentiary, a prisoner may purchase medicine and orthopedic aids at his own expense or to receive them from family members of close persons.)

11. B.K. Penitentiary Niš, ID number 8638

11.1. Specificity of the case/reasons for hunger strike

The prisoner suffers from diabetes for which he gets insulin therapy which does not give effects and it is necessary to provide adequate treatment.

11.2. Legal grounds for prisoner's request:

Law on the Enforcement of Criminal Sanctions (**Article 65:** Everyone must respect the dignity of a prisoner.
No one may endanger physical and mental health of a prisoner)
Article 101: A prisoner is entitled to medical care pursuant to general regulations on medical protection and provisions of this law.
Prisoners who cannot receive adequate medical treatment within the institution shall be transferred to the Special Prison Hospital or other health institution, and pregnant women to a maternity ward for childbirth.
Time spent on medical treatment shall be calculated as the time of imprisonment.
Article 102: Medical treatment of a prisoner is conducted with his agreement.
Forced feeding of prisoner is not allowed.
Exceptionally, if a prisoner seriously impairs his health or life by refusal of medical treatment or food, medical measures shall be applied as determined by a doctor.
A medical examination of a prisoner is conducted only in presence of a medical officer, unless the medical officer requests otherwise.
A prisoner has the right to be informed of the findings regarding his health and the content of his medical file, except in cases provided by general medical regulations.
A prisoner shall have access to services of a dentist.
There may be established a special ward for quitting psycho-active substances.
More detailed regulations on the work and conduction of program for quitting psycho-active substances is brought by the Minister in charge of justice.
Article 103: The doctor in the institution is required to:
1) examine every prisoner immediately upon admittance into the institution, after return from a temporary leave and before release from the institution;
2) at admittance to the institution and subsequently, whenever appropriate, determine whether the prisoner is physically and mentally ill and his/her work capacity;
3) examine without delay a prisoner complaining of illness or if indications of an illness are present;
4) daily examine a prisoner who is ill or refuses food or water, and regularly, in intervals not longer than three months, other prisoners;
5) control accommodation, nutrition, hygiene, sanitary and other conditions impacting on the health of prisoners;
6) keep separate records of injuries of prisoners and inform the Head of Penitentiary about any sign or indication that the prisoner is ill treated;
7) supervise the work of pharmacy and medical staff recording, issuing and giving the prescribed therapy to a prisoner.
The doctor in the institution shall submit to the Head of the prison in writing:
1) periodical reports on the health of prisoners;
2) a report whenever he determines that the physical or mental health of a prisoner has been impaired or compromised due to extension or the manner of serving of sentence and shall recommend measures for treatment of such person, including possible suspension of serving of sentence;
3) findings and recommendations on the quantity and quality of food for prisoners;
4) findings and recommendations for improving hygiene in the institution and of prisoners, state of sanitary facilities and conditions, heating, lighting and ventilation in premises where prisoners are confined;
5) findings and recommendations relating to necessary physical activity of prisoners;
6) The Head is required to promptly undertake measures specified in paragraph 2 of this Article that are recommended by the doctor
Article 104: Article 104: Upon the request of a prisoner, the Head of Penitentiary may allow him to be examined by a specialist if the doctor failed to suggest such examination.
The prisoner then bears the costs of examination, unless the Head of Penitentiary decides otherwise.
Article 105: Regarding serious health impairment or life of a prisoner, or his transfer to the prison hospital or other medical institution, the penal institution shall promptly inform their spouse, children, adopted children or a person with whom the prisoner lived in a common-law marriage or other form of permanent relationship if any, otherwise the institution shall inform his parents, adoptive parents, brother or sister or other relatives.

- Rulebook on House Rules (**Article 32**: A doctor prescribes therapy and organizes the manner of issuing, giving and recording it.
- The doctor prescribes which medicines a prisoner may have with himself.
  Article 33: Upon the approval of the doctor in Penitentiary, a prisoner may purchase medicine and orthopedic aids at his own expense or to receive them from family members of close persons.)

(Procedure of submitting complaint in relation to inadequate classification as well as a treatment program deriving from inadequate category)

12. I.N. Penitentiary Sremska Mitrovica, ID number 12324

12.1. Specificity of the case

During the transfer from one penitentiary to another, the prisoner behaved properly all the time. At the admission to new penitentiary, with inappropriate procedure (determining category for the prisoner was done as if he were just admitted to sentence serving - which is a procedure that is not applied at transfers) his category was reduced to a lower. Lower category caused reduction of commodities he had in the category with which he started the transfer.

12.2. Legal grounds for prisoner's request:

Law on the Enforcement of Criminal Sanctions (**Article 63:** Upon entering the institution a prisoner is sent to the admission ward.
A prisoner may stay maximum thirty days in this ward.
In the admission ward, information is collected about the personality of a prisoner, aimed at his assignment and drawing up of a correctional program.
Assignment of prisoners is based on the type of criminal offence, length of sentence, guilt, attitude of the prisoner to the offence, prior criminal record and other criteria set out in the Rulebook on treatment, treatment program, assignment and subsequent assignment of prisoners.
During serving of sentence it is possible to subsequent assign (reclassify) a prisoner to another treatment group in respect of achieving the purpose of enforcement of sanction, or change the correctional program if necessary. Expert team consists from the representatives of Penitentiary services.
Decision on treatment program and decision on subsequent classification is delivered to the prisoner in maximum three days from bringing a decision.
A prisoner may appeal against the decision on subsequent assignment to Director of Directorate within three days from receiving the decision.
Rulebook on treatment, treatment program, assignment and subsequent assignment of prisoners is brought by the Minister in charge of juridiciary.)

- Rulebook on treatment, treatment program... (**Article 35:** Prisoner is subsequently assigned to a group with a lesser degree of special rights based on the imposed disciplinary punishment for serious offence and subsequently determined increased risk level.
  A prisoner may be subsequently assigned to a group with a lesser degree of special rights based on the disciplinary punishment for smaller disciplinary offense, initiation of new criminal proceedings or imposed new prison sentence.)

(Complaints related to discrimination of prisoners with disability)

13. A group of prisoners with disabilities accommodated in the hospital of Penitentiary Zabela (N.A. ID number 33292, S.M. ID number 3391, I.N. ID number 3824, S.Z., V.M. ID Number 3745)

13.1. Specificity of the case/reasons for hunger strike

Disabled prisoners pointed to the existence of numerous architectural barriers that make their life and moving in the facilities of Penitentiary Zabela very difficult. They are accommodated on the 1st floor of the hospital without elevator so that they cannot participate in the activities available to other prisoners. As well, they do not have a possibility of work engagement from which it comes that they

cannot advance through categories and thus they are deprived of commodities that come from better categories.

13.2. Legal grounds of the request:

- Law on the abolishment of discrimination of disabled persons

Law on the Enforcement of Criminal Sanctions (**Article 66:** A prisoner is entitled to accommodation corresponding to contemporary hygiene requirements, and local climate.
Prisoner shall be assigned to common rooms and dormitories based on a careful analysis of all circumstances and information recorded in the admission ward, particularly taking into account the age, personal characteristics and interests as well as other features important for positive interaction between the prisoners and elimination of risk of mutual physical or mental endangerment.
- A prisoner with special needs is entitled to accommodation in line with the type and degree of his needs.)

(Requests to Heads, different)

14. V.R. Penitentiary S. Mitrovica, ID number 5081

14.1. Specificity of the case/reasons for hunger strike

Test of prisoner's urine done in Penitentiary Sremska Mitrovica gave positive result to presence of psycho-active substances.

He does not believe in the preciseness of the test. He says that the test gives a positive result (as if some psycho-active substance was used) when using pain killers and he used them in the period of testing. He required blood analyses so that it could be undoubtedly determined whether he took psycho-active substances. Due to the positive result of the test to psychoactive substances, the prisoner was subjected to disciplinary procedure in which the statements of the prisoner were not examined nor the suggested evidence was presented.

14.2. Legal grounds for prisoner's request:

Law on the Enforcement of Criminal Sanctions
(**Article 158:** A prisoner under disciplinary proceedings shall be questioned and his statements will be checked and other evidence presented.
A record shall be made of the entire course of the proceedings.)

- Rulebook on disciplinary measures and offenses towards prisoners (**Article 14**: A prisoner against whom a disciplinary procedure is conducted has right to give statement on the facts and evidence that burden him and to expose all the facts in his favor.)

D/Analyses- General Part

A criterion for representation of prisoners was that they were on hunger strike and the subject of representation was the reason/problem that they could not have solved in a different way and for which they started hunger strike.

Analysis comprised actions per requests or complaints of the prisoners submitted to organs within the system for the enforcement of criminal sanctions, in the period between 04.02.2011. and 02.03.2012. Right to submit requests and receive answers to them derives from Article 114, 114a and 114b Law on the Enforcement of Criminal Sanctions.

a – Existence of the reply to complaint/ requests

Within the covered period, 34 complaints were submitted in total. 18 replies were received. For 16 submitted requests no answer was received (47% of requests without reply: 8 requests addressed to heads of penitentiaries, 2 addressed to the Director of Directorate, 5 to heads of health care services and 1 to other department within the Ministry of Justice).

Out of 18 cases for which replies to complaint/request of the prisoner were received, one was positively solved and 17 negatively (replied to 53% of the requests: 3% positively, 50% negatively out of submitted in total).

b – Speed of reply (in sense of respecting deadline, due time)

In the observed period, in eight cases reply to submission or request of the prisoner was received within the deadline provided by the Law.

In ten cases reply of the organ in charge to the request or submission of prisoners was not received within the deadline anticipated by the Law on the Enforcement of Criminal Sanctions. In cases in which the Law on the Enforcement of Criminal Sanctions does not prescribe the deadline, the replies were not received even in the period of two months which is a deadline prescribed by the Law on General Administrative Procedures, as a period after which an institution of "Silence of administration" is applied. In all the cases in which the Law on the Enforcement of Criminal Sanctions does not prescribe deadlines, provisions of the Law on General Administrative Procedure are applied, bearing in mind that that is a basic law according to which relations between citizens and state organs are stipulated in this case male/female prisoners and organs within the Directorate for the Enforcement of Criminal Sanctions.

c – Disproportion between positive and negative decisions

Out of 34 submitted requests only one was positively solved. Such disagreeable relation makes one think that the subject of the analysis should probably be, together with the contents of negative replies, maybe some other circumstances that contribute to such tendency towards rejecting requests and complaints of prisoners.

Regarding the impact on prisoners, the starting point is that the prisoners are persons who should be, during sentence serving, in the process of correctional treatment, at least it is prescribed by the Law. In that case, one should bear in mind in which manner repeating and generally rejecting, influence the person in re-socialization process. A great number of negative replies have negative impact on prisoners on two levels:

- One is that it de-motivates them to fight for their rights through the system;
- The other one is that they adopt the behavior based on rejecting and example of prison system which is an image of the society system for the prisoner, which makes the possibility of their re-socialization weaker.

Objective circumstances, which at first glance could be reason for bringing negative decisions (for example overpopulation of prisons) do not always have to be an obstacle to positively solve the request. We surely know that in all big prisons there is always a number of prisoners who want the transfer to some other, big prison of the same class. If the heads exchanged such information or if they were processed on the central level, there would be a possibility created for the transfer of prisoners (if not in the moment of the request, then, after some shorter time), by the exchange among prisons, where the number of prisoners in prisons would remain unchanged and the transfer would not influence the "over-population of the capacities of the penal-correctional institution".

What is especially worrying is a group of negative replies which contain formally negative reply, while in the meantime, prisoner's request is already processed in some way (the form - say "NO", do "YES").

E/ Analysis- denied rights of prisoners

I/ In individual cases of those who were represented:

1. Right to complaint
(Imprisonment aspect; protection measures, process of lodging complaints)

Law on the Enforcement of Criminal Sanctions, Article 114
(A prisoner may, in order to realize his rights, address the Head or some other authorized person from the appropriate Penitentiary service, with a submission.
A person from Paragraph 1 of this Article is obliged to reply to the submission of a prisoner within 5 days from the day when the submission was submitted, in writing and with explanation.
A prisoner is entitled to a complaint to the Head of Penitentiary for the violation of a right or other irregularities he was subjected to in Penitentiary.
The prison head or a person authorised by him is required to carefully consider a complaint and make a decision within 15 days.
A prisoner who does not receive a reply to his complaint or is not satisfied with the decision has the right to file a written complaint to Director of Directorate within 8 days from the receipt of the decision.
Director of Directorate is obliged to decide upon the complaint within 30 days from the receipt of the complaint.)

In 47 % of the cases, submitted complaints remained without reply. With such non-acting upon the complaints, the rights to submission and appeal anticipated by Article 114 of the Law on the Enforcement of Criminal Sanctions were violated for the prisoners who submitted them. Obligations of organs anticipated by this article are clear; they are not subjected to the evaluation of viability and discretion right of an officer and must be done in clearly defined deadlines and exclusively in writing.

System omission: Reflected in the work of services and lack of appropriate control of that work from higher instance, in sense of responsibility of the enforcement services system to implement in whole the Law on the Enforcement of Criminal Sanctions (related to the lack of reply to 47% of submitted complaints). When almost half of complaints remain completely without reply, i.e. Law is not enforced in 50% of cases, such a problem is not only an omission of an individual or omission of certain services, but it is about a clear lack in the system of the enforcement of criminal sanctions (in sense of organization of the work of services).

Simultaneously, besides the fact that such non-acting deprives prisoners of the rights that they are entitled to according to the law, it also influences the reduction of their trust in purposefulness of submitting complaints.

Omissions of services: are related to replies where deadline is not respected and they fall into group of 53% of the cases where replies were received.

For 53% of the complaints of prisoners there is a reply, no matter whether it was given within or out of deadline. Out of this number, a number of complaints was replied after more than two months, which is a general deadline according to the Law on General Administrative Procedure, after which, institute of "Administration Silence" is started to be applied. Probable reason for that is a tendance of the organ, within the Directorate for the Enforcement of Criminal Sanctions to consistently respect only deadlines from the Law on the Enforcement of Criminal Sanctions end even them selectively.

(all represented)

2. Right to visits/general rights of a prisoner (maintenance of family and social relations)
(Imprisonment aspect, regime and activities, contacts with outer world, maintenance of family and other relations)

Article 78 Law on the Enforcement of Criminal Sanctions: Position of a prisoner, general rights of a prisoner, right to visits.

System omission: Incompetent organ interprets (non)existence of international treaty.
(I.N.)

3. Right to visits/general rights of a prisoner (maintenance of family and social relations)
(Imprisonment aspect, regime and activities, contacts with outer world, maintenance of family and other relations)

Article 78 Law on the Enforcement of Criminal Sanctions: Position of a prisoner, general rights of a prisoner, right to visits.

System Omission: Minister prescribes in which and in how many penitentiaries sentence of 20, 30 and 40 years may be served; when there is only one such penitentiary, for a great number of prisoners some of rights are surely violated, especially right to maintaining family relations due to great distance of their residence.
(F.G.)

4. Right to visits/general rights of a prisoner (maintenance of family and social relations)
(Imprisonment aspect, regime and activities, contacts with outer world, maintenance of family and other relations)

Article 78 Law on the Enforcement of Criminal Sanctions: Position of a prisoner, general rights of a prisoner, right to visits.

Omission in the work of the Service: Due to recontrstuction works in Penitentiary Sremska Mitrovica, he was temporarily transferred to Penitentiary Niš in 2007, ant until now he has not been transferred back. His family lives in Vojvodina.
(Z.B.)

5.Right to humane treatment
(Imprisonment aspect: treatment, torture and ill treatment, exposition to physical violence, relations between prisoners and staff)

Article 65 Law on the Enforcement of Criminal Sanctions: Position of a prisoner, general rights of a prisoner, right to humane treatment.

Omission in the work of the Service : Service competent for evaluation of justifiability of assignment of a prisoner to another penitentiary accommodated the prisoner in a penitentiary where he could be exposed to revanchism of officers because his previous escape was the reason why their colleague lost his job.
(A.S.)

6. Right to humane treatment
(Imprisonment aspect: treatment, coercive means, protecting measures, separation of categories of prisoners)

Articles 65 and 139 – Position of a prisoner, general rights of a prisoner, right to humane treatment; measures for maintaining order and safety, special measures, accommodation under special surveillance.

Omission in the work of the Service: Inadequate acting of Security Service in sense of disproportionate pressure on a prisoner in comparison to the merits of suspicion that he prepared the escape.
(D.B.)

7.Religious rights and religion/ general rights of a prisoner
(Imprisonment aspect: regime and activities, religion, material conditions, food)

Articles 70 and 113 of the Law on the Enforcement of Criminal Sanctions – Prisoner's position, rights of a prisoner, diet; Position of prisoner, rights of a prisoner, religious rights.

Omission in the work of prison ***services*** and lack ***of control by the*** enforcement ***system*** whether the prison service enforces the Law on the Enforcement of Criminal Sanctions – Lack of appropriate conditions (physical and material-food) to practice religion and rites in one big prison. Simultaneously, the length of prisoner's sentence dictates that he has to be accommodated in that prison, not transferred to some other in which a bigger group of Muslims serve their sentence and where there are adequate conditions for practicing that religion rites.
(F.G.)

8.Right to accommodation and right to free time/general rights of a prisoner
(Imprisonment aspect: regime and activities, outdoor exercises, leisure activities…)

Articles 66 i 68 Law on the Enforcement of Criminal Sanctions – Position of the prisoner, rights of a prisoner, accommodation; Position of the prisoner, rights of a prisoner, prisoner's free time.

Omission in the work of the Service in charge of classification of a prisoner within Penitentiary in a manner that the prisoner was accommodated in the closed part of the semi-opened type prison which make that his rights that he is entitled to according to the law, were denied without grounds.
(I.M.)

9. Right to classification/ admittance and classification of the prisoner, right to accommodation and right to free time, general rights of a prisoner.
(Imprisonment aspect: regime and activities, outdoor exercises, leisure activities …..)

Articles 63, 66 i 68 – Admittance and classification in Penitentiary- classification of a prisoner; Prisoner's position, rights of a prisoner, accommodation; Position of a prisoner, rights of a prisoner, free time of a prisoner.

Omission in the work of the service in charge of classification of a prisoner within Penitentiary in a manner that the prisoner was accommodated in the closed part of the semi-opened type prison which make that his rights that he is entitled to according to the law, were denied without grounds.
(D.K.)

10.Right to humane treatment and right to health care protection/general rights of a prisoner
(Imprisonment aspect: access to health care protection)

Articles 65, 101-105 Law on the Enforcement of Criminal Sanctions- Position of a prisoner, rights of a prisoner, right to humane treatment; Position of a prisoner, rights of a prisoner, health care protection.

Omission in the work of medical ***service***: Deprivation of complete therapy and treatment prescribed by other doctors specialists and disabling of a prisoner to be taken to medical examination to one more specialist (ophthalmologist) so as to get, at his own expanse, adequate eye glasses.
(M.K.)

11. Right to humane treatment and right to health care protection/general rights of a prisoner
(Imprisonment aspect: access to health care protection)

Articles 65, 101-105 Law on the Enforcement of Criminal Sanctions- Position of a prisoner, prisoner rights, right to humane treatment; Position of a prisoner, health care protection.

Omission in the work of medical ***service***: Deprivation of complete therapy and treatment prescribed by other doctors specialists.
(V.M.)

12. Right to humane treatment and right to health care protection/general rights of a prisoner

Articles 65, 101 – 105 Law on the Enforcement of Criminal Sanctions- Position of a prisoner, prisoner rights, right to humane treatment; Position of a prisoner, health care protection.

Omission in the work of medical ***service***: Disabling appropriate post-surgery treatment.
(N.P.)

13. Right to humane treatment and right to health care protection/general rights of a prisoner
(Imprisonment aspect: access to health care protection)

Articles 65, 101 – 105 Law on the Enforcement of Criminal Sanctions- Position of a prisoner, prisoner rights, right to humane treatment; Position of a prisoner, health care protection.
Article 29 Paragraph 4 of the Rulebook on House Rules of Penitentiaries and District Prisons.

Omission in the work of medical ***service*** in sense of not providing a copy of medical file to a prisoner.
(B.K.)

14.Right to classification through admittance and classification of a prisoner
(Imprisonment aspect: ……)

Article 63 Law on the Enforcement of Criminal Sanctions – Admittance and classification of a prisoner in Penitentiary, prisoner's classification.

Omission in the work of Admittance ***Service*** which treated the prisoner in the process of transfer as if he were newly admitted prisoner. Newly admitted prisoner, starting to serve the sentence, is evaluated and his category is determined. Prisoner in transfer keeps his category, determined by the service in penitentiary from which he is being transferred. With such an action, Admittance Service from the Penitentiary to which the prisoner arrived, also brought into question the quality of the work of colleagues from the Penitentiary from which the prisoner came, by giving worse category to a same person, who did not commit any offence, in a same day.
(I.N.)

15.Right to free time/general rights of a prisoner
(Imprisonment aspect: regime and activities; outdoor activities, leisure activities, education, work...)

Articles 66 i 68 Law on the Enforcement of Criminal Sanctions – Position of a prisoner, rights of a prisoner, accommodation; Position of a prisoner, rights of a prisoner, prisoner's free time.

Omission of the System: which is a consequence of lack of all needed amendments to sub-legal acts by which it would be precisely defined and implemented in which conditions disabled persons may be accommodated, in which premises and in what way they would be generally enabled equality with other prisoners. These prisoners were accommodated on the 1st floor (which could be reached only by stairs) in Penitentiary's standard premises.
(Group of Disabled prisoners)

16.Right to presentation of evidence in disciplinary procedure
(Imprisonment aspects: protection measures, disciplinary procedures)

Article158 of the Law on the Enforcement of Criminal Sanctions-Disciplinary offences, measures and procedure; Disciplinary procedure, evidence in disciplinary procedure.

Omission in the work of the service: Omission in the work of disciplinary commission consisting in not respecting the right of a prisoner to present the evidence that he proposed in disciplinary procedure.
(V.R.)

17.Right to transfer to another penitentiary
(Imprisonment aspect: ……)

Article 116 of the Law on the Enforcement of Criminal Sanctions – Position of a prisoner, transfer of a prisoner.

Omission in the work of services: Overpopulation dictates the decisions by which requests of prisoners for transfer to another penitentiary are rejected. We assume that Article 41 of the Law on the Enforcement of Criminal Sanctions is not enforced and which anticipates that in the process of assigning a prisoner to sentence serving, the Court in charge should cooperate with Directorate in a manner that, before defining a day when a prisoner should turn in for sentence serving, the Court is obliged to ask for the report from the Directorate about the number of available places in penitentiaries. The application of this Article of the Law on the Enforcement of Criminal Sanctions would bring to smooth decrease in the number of prisoners in Penitentiaries and more even assignment of prisoners.
(6 prisoners)

II/ List of denied rights:
(Number and type of denied rights of prisoners)

I. Right to complaint (Imprisonment aspect: protection measures, process of filing complaints): 16
II. Right to visits/general rights of a prisoner: (Imprisonment aspect: regime and activities, contact with outer world, maintaining family and other relations): 3
III. Right to humane treatment (Imprisonment aspect: treatment, torture and ill treatment, exposition to physical violence and relations between prisoners and staff): 6
IV. Religious rights and religion/general rights of a prisoner (Imprisonment aspect: regime and activities, religion, material conditions, food): 1

V. Right to accommodation and right to free time/general rights of prisoners (Imprisonment aspect: regime and activities, exercises in the open air, free activities …..): 3

VI. Right to classification through the admittance and classification of a prisoner: 2

VII. Right to health care protection/general rights of a prisoner (Imprisonment aspect: Access to health care protection): 4

VIII. Right to presentation of evidence in disciplinary procedure (Imprisonment aspects : protection measures, disciplinary procedures): 1

IX. Right to transfer to another penitentiary: 6

TOTAL: 42

III/Observed lacks:

Denied rights of prisoners are a consequence of two types of lacks - system ones and omissions in the work of certain services.

A system lack understands omission that is a consequence of a lack of mechanisms and procedures that are an integral part of laws and sublegal acts that stipulate this or related areas.

System lacks appear in the following cases:

1) In the work of services as a consequence of lack of appropriate control of that work by a higher instance, in sense of responsibility of the enforcement system to enforce in the whole the Law on the Enforcement of Criminal Sanctions (replies to complaints and requests of prisoners, conditions to practice religion in every penitentiary…).

- Proposal for solution: Organization of work of all the employees in prisons and Directorate, in line with the Law on the Enforcement of Criminal Sanctions is necessary to be based on the starting point which is **respect of prisoners' rights and implementation of the process of their resocialization**, from which derives in what manner and with what actions that is implemented.

2) In the lack of recognizing the existence of certain groups of prisoners (whoever can be a prisoner) and lack of prescribed procedures in which way they will realize their rights (for example: Kosovo and Metohia residents, prisoners serving sentences based on the verdicts brought by Independent Autonomous Area Krajina, persons without citizenship and similar).

- Proposed solution: Amendments to Law and sub-legal acts.

3) In insufficient number of penitentiaries in which the most severe prison sentences are served (at least two, territorially evenly positioned penitentiaries); by accommodating all the prisoners who serve the most severe prison sentence in only one penitentiary, to a greater number of prisoners some rights are denied (family visits…). The same problem derives also from the existence of only one prison where female prisoners serve their sentences.

- Proposed solution: Determining at least two penitentiaries intended for the serving of most severe sentences, at the distance of at least 300km.

4) In the lack of appropriately harmonized amendments to laws and sub-legal acts which precisely define physical and other conditions that have to be met, so that prisoners, disabled persons are not discriminated.

- Proposed solution: Amendments to laws and sub-legal acts in line with already submitted Proposals prepared by Coalition for the Reform of Prison System.

In four previously described examples, the lack is related to Directorate for the Enforcement of Criminal Sanctions or Ministry of Justice.

When omissions in the work repeat in the same manner, by the same services, the conclusion is that it is about omission of the system.

When speaking about the omissions in the work of medical services, they are enabled by the lack of control of the competence of their work. Ministry of Justice (bearing in mind the area of work which is justice-not health) has no capacity to regularly supervise and guarantee the work expertise of medical services in 28 penitentiaries. This role may be played only by the Ministry of Health. It is necessary that medical services within institutions for sentence serving go under the competence of Ministry of Health.

In this issue it is about the omission of a higher instance from the level of ministries and which delegated the competence over the work of doctors to wrong ministry.

- Proposed solution: Transfer of competence over health care services under the competence of the Ministry of Health Care.

Omissions in the work of certain services imply all the other observed omissions which do not have source in the system but which may be related to clearly defined service, from the reasons which imply lack of competence, negligence of individual or something different.

- Proposed solution:

a) It is necessary to provide and conduct additional education of the staff and their sensibilization in favor of respect of rights of target group they deal with;
b) It is necessary to anticipate more precise control mechanisms which imply award and sanction;
c) Work of all the services should be based on the fulfillment of basic purpose of the existence of the system for the enforcement of criminal sanctions, and that is re-socialization of prisoners.

IV/ Lawfulness in the acting of services

Each disrespect of right prescribed by law is illegality in the work of the service which denied that right. During this period, the team which had been working on the implementation of these activities determined nine different rights that were violated by (non)acting of officers from penitentiaries and Directorate for the Enforcement of Criminal Sanctions.

Under legal acting we consider all those cases in which competent services or Directorate replied to complaint or request of a prisoner within the deadline prescribed by Law.

F/ Sociological-Communicological Analyses, Decisions and Explanations

1. Introduction

Society is communication. If we started from this assumption we would very soon come to a new one, which is that the quality of communication between the citizens and the state is one of the important factors in the realization of citizen's rights and building of trust in the state. In line with that, of crucial importance is arrangement and improvement of public/formal communication that is going on between the citizens/clients and state through official documents.

By analyzing formal communication on the level of prison system, as actors in the communication process, we have a system for the enforcement of criminal sanctions and competent Ministry of Justice, as *an emitter of the message* - author of documents, then contents of the document *as a message*, document as a *carrier of the message* and prisoner as a *recipient of the message*, i.e. document. This communication has a counter-direction of information flow on case when a prisoner or his authorized representative, with an official document, addresses the prison system or competent Ministry. Besides these direct actors in communication chain there are also indirect ones, i.e. those that have an indirect role of a recipient of the message, and this is, above all, interested public (family, friends or someone else who could have interest to act in cases with which the document deals), other state organs and media as special processors of information (see figure 1).

Figure No 1:

That is how we reach crucial issue and that is understanding of communication. Independently from the direction, understanding of the given content/subject of communication (who and in what manner is capable, willing and with what motives decodes messages) is of crucial importance for a successful communication. As well, if we consider the process of exchange of information in social context, communication has, besides informing, a function of education, contributes to the increase of procedure of public organs decision making transparency and increases trust of citizens in the work of state institutions.

Pursuant to that, based on the previously written we will define indicators of *communication quality* of the document that will serve as a framework for the analyses of the selected documents.

- Existence of institution identity and author of the document
- Connotation which the author attributes to the recipient of the document
- Number and type of data source consisted in the document
- Clear definition of sources used in the document

- Validity of data source
  Relevance of the source used in the document for the process of decision making and made decision
- Discourse of addressing the recipient of the document
- Intelligibility of presented information to the recipient of the document
- Existence of non-standard contents in case of need

Existence of institution identity by which the document is delivered and a person who is the author of the document are main element of document's integrity. In concrete it means that the institution has its memorandum (name, emblem and address) and a stamp and that the author of the document is clearly noted. It is also very important that the document is signed by a legally responsible person.

Connotation which the author attributes (gives) to the recipient of the document is manifested on two levels. The first one is identity one, i.e. in which manner the author of the document addressed/named someone in the concrete document. The other one, practical, is reflected in how the author of the document relates to the concrete "acting" of some of the actors in the document. In concrete, in case of the decisions that we will analyze, connotation of the author of the document on one side is seen through the addressing of the prisoner and authorized representative and on the other side by presenting facts and attitudes on the prisoner and his attorney.

When speaking about a person who is serving prison sentence, he/she could be addressed in a legally defined identity or informal identity or in inclusive manner. It means that in the disposition of the decision, factual condition that a concrete citizen is in the position of a prisoner would be respected, while he or she would be addressed only by name and last name in the remaining part of the document.

Sources and data used at decision making make a special element of integrity of both the document and the decision itself. For that reason it is very important what sources and data are used, how relevant they are for the decision subject, are they given in the manner in which their validity could be checked i.e. are they available to the recipient in the form of the attachment to the decision.

Discourse of presentation of the contents of the document is a significant element of communication quality of the document. Discourse itself (informative, educative, orderly, dialogue, confronting, explanatory, refuting…) and intelligibility of the document to the recipient, directly influences the character of the reaction of the receiver of the document and image of the document's receiver about the author of the document, in concrete case about the state organ.

Even besides the intention to have the permanent form of public communication, the quality of a public document is reflected as well in the existence of non-standard contents that can contribute to changes. It is often needed to, in the framework of the document itself, precisely emphasize not only the legal remedy but also to give the example of good practice, give advice or suggest some activity or measure that was missing in the previous period, and its implementation would make the submission of complaint unnecessary or it would improve respect of, above all, procedures and rights that derive from it. In concrete case, when speaking about the decisions that we will analyze here, there is need to send apologies for omissions in some cases, or, by the author, to point to the need of reconsideration of the work of some officer or institution in general.

2. Analysis

It is important to emphasize that this analysis is aimed at determining communicology aspects of brought decisions and their implication on the state of institutions in prison system in Serbia, as well as to prisoners, and thus we could characterize it as communicology-sociological. Legal aspect, in sense of lawfulness of brought decisions was not the subject of this analysis, but the fact to what extent the process of bringing decisions was visible and transparent. This apparently small difference

is very important because it could be a key place in the process of building more than needed trust among actors within prison system.

Thus, our aim is to define whether the existing decisions in the part of their explanations are in the function to justify the brought decision or in function to inform. It means that we want to analyze based on which and what sources was the decision brought, what is the relation of the author of the document to the given sources and facts, with what discourse was the explanation of brought decision presented, what is the connotation of the mentioned actors (positive, negative, neutral) and above all prisoners and their attorneys.

Wishing to investigate the communication on the relation prison system and convicted citizen/attorney, we analyzed seven decisions. Three analyzed decisions were brought by prison management; three were brought by Directorate for the Enforcement of Criminal Sanctions and one by the Ministry of Justice. One of seven analyzed decisions is positive for the submitter of the complaint.

	Positive	Negative	Total
Ministry of Justice	0	1	1
Directorate for the Enforcement of Criminal Sanctions	1	2	3
Penitentiary management	0	3	3
Total	1	6	7

In the following part we will present analyses of the selected concrete cases and then give summarized conclusions and recommendations.

2.1 Decision by Penitentiary Požarevac – Zabela: Case F.G.

In the decision, as ungrounded, was refused the appeal of F.G. for not having registered the request for transfer to Penitentiary in Niš. The decision has clearly visible registration number, sending date and it is stamped, but it was unclearly signed by the person authorized to sign on behalf of the Head. After the disposition where negative decision was given, on the remaining part of the page, the explanation for the decision was presented.

In the explanation, which has informative discourse, it is claimed that F.G. lost his right to transfer because there is no evidence that he submitted a request for transfer in regular procedure and which was addressed to the Ministry of Justice and Directorate for the Enforcement of Criminal Sanctions. As well, the explanation gives two sources based on which the decision was brought. The first one is the statement of unnamed officer from the registration office in Penitentiary Požarevac Zabela, according to which the request of F.G. was not registered in the official registration book - commander's book. The other one is the report from the Treatment Service, with given date which was also taken as the source for the decision although it was not stated why that report was required, what conclusions are presented, who produced it and who signed it and what is the relevance of the conclusion from the report for a decision that deals with procedural issues.

At the end of the document there is a legal remedy in which it is stated that the prisoner has right to appeal the decision within the legal deadline.

From communication side, it is appropriate to notice that this decision is finalized without final salutation. As well, it is notable that as a relevant and decisive source, the statement of a clerk from registration office is used instead of providing the copy of a page from the commander's book for the day(s) for which the submitter claims that he submitted the request. By taking this source as a relevant

one, management of Penitentiary Požarevac Zabela classified themselves on one side believing the word only, at the same time, giving up the right to gather additional information that would be in the function of objective decision in a concrete case and that would point to the prevention of eventual omissions and/or abuse by prison administration and/or treatment officers.

In cases like this, the decision should contain instructions how a prisoner who intends to submit same or similar request should act in the future, i.e. whom he/she should consult before starting the procedure. Same like that, decisions like this should contain recommendations to management of penitentiaries about what they should do in order to prevent such situations. In this way the decision itself would have preventive-educative function which would for sure contribute to the improvement of realization of prisoners' guaranteed rights.

2.2 Decision of Penitentiary Sremska Mitrovica: Case I.N.

The subject of this document is rejecting of ungrounded complaint and the submitter is addressed as "prisoner N.I." The decision was brought by the Head and it has clearly visible registration number, date of sending and a stamp but it was not signed by the Head of Penitentiary although there is his name on the analyzed document.

In the first paragraph of the Explanation it contains material error reflected in wrong name and last name of the submitter of the complaint. Instead of name I.N. as a submitter of the complaint name R.M. was given which brings into question the validity of the document and points to the routine work of the author of Explanation.

Negative decision is given in the disposition of the Decision; the explanation has informative-manipulative discourse. Manipulative discourse of this document is reflected in the fact that on one side in detail is given the legal framework based on which facts presented in the complaint are carefully investigated- the complaint that was submitted to the Head of Penitentiary on which it is pointed to the denial of rights to I.N. after the transfer from KPZ Niš to KPZ Sremska Mitrovica, and on the other hand it can not be determined how the procedure based on which "right and lawful decision" was brought looked like (example of pleonasm). More precisely it is not given what in concrete was done in order to reach "decisive" facts, except for information that by the decision of expert team of Penitentiary, the prisoner was classified in Group V1, that he was granted Rights from group V1, by which Article 115 of the Law on the Enforcement of Criminal Sanctions was respected. Instead of admitting the omission and apology, the management of Penitentiary tries to provide legality of the brought decision by using legal phrases and stating general activities, and observed omission and justified complaint of the prisoner tries to make invisible.

In cases when the decision is positive for the prisoner, it should contain information on taken legal sanctions for made omissions, then information on results on implementation of sanctions over the responsible ones for the violation of prisoner's rights and in the end apology of the management of Penitentiary to the prisoner.

2.3 Decision of Penitentiary Niš: Case B.K.

Decision in this case was brought based on the procedure conducted by the Deputy Head of Penitentiary. Decision by which the complaint of B.K.'s attorney is rejected as ungrounded is given in the disposition of the Decision.

In the part of explanation of the decision, legal framework by which the acting of prison management upon the reception of B.K.'s attorney is stipulated is given in informative justifying discourse. Then activities based on which it was concluded that there were no omissions in the work of unnamed (either by name or job title) were presented. When taken up activities were listed it was not given who did the given activities, source/document in which the rapporteur noted his observances and which evidence was evaluated when bringing the decision that the copying machine which had been out of

work for a longer time, was "guilty" for this omission and that the state officer was not able to copy medical documentation and submit it.

Instead of timely delivered information about the fact that the copying machine was out of work and information when the copied documents will be provided, with an apology, management of this Penitentiary decided to reject the complaint. This is a classic example where lack of will for good communication brought to (unnecessary) administrative procedure.

The Decision has clearly visible registration number, date of sending and stamp. It was signed by the Deputy Head of Penitentiary. In the part of legal remedy it clearly defines procedure and place for the submission of the appeal, to Penitentiary Niš, for Directorate for the Enforcement of Criminal Sanctions.

2.4 Decision of Directorate for the Enforcement of Criminal Sanctions: Case M.I

In this particular case it is about a decision brought by Coordinator of the Directorate for the Enforcement of Criminal Sanctions at second instance procedure. Complaint of M.I.'s attorney on the basis of "silence of administration" of District Prison in Leskovac, was evaluated as ungrounded in the disposition of the decision.

In the explanation the first given thing was the date of submission of the complaint and legal framework based on which the complaint on "silence of administration" was submitted and then legal framework for bringing a decision by Directorate for the Enforcement of Criminal Sanctions as a second-instance organ, by the complaint of M.I's attorney.

In the explanation it is stated that the sources for decision making were received data and submitted acts of District Prison in Leskovac. From the construction of the sentence it can't be seem whether it is about two sources of information, if yes, what do the "received data" comprise- in sense from whom and in which form they were received and what is the relevance of the data for the subject of decision making. As well, it is unclear who had insight in provided documentation and whether there is a document in which finding from the insight in available documents were stated.

Besides partial unclearness related to the identity of the source of facts, based on which the decision was brought, it remained unclear in the explanation which problem influenced "silence of administration", i.e. nature of the problem is not given. It should be of a special importance both for the submitter and for the Directorate in charge of improvement of functioning of prison system in Serbia. Justifying presented information may be a motive for speculations that Directorate for the enforcement of criminal sanctions covers the weaknesses in the work of prison, which directly influences level and quality of realization of rights of prisoners.

When speaking about the penultimate paragraph in which it is stated that in the complaint it was not stated whether this "silence of administration" influenced the realization of rights of a prisoner, its content may be observed in two ways. First, that this is one more justification for "silence of (prison) administration" and another one that this paragraph we observed as (in) deliberately given instruction to add this argument as well in future complaints of this or similar kind, i.e. that it would be taken into account when deciding upon the complaint.

In the end there is information of legal remedy of general type.

Decision was properly registered, signed by the person legally responsible to bring such a decision.

2.5 Decision of Directorate for the Enforcement of Criminal Sanctions: Case D.B.

In the second case in which the Directorate acted as a second-instance organ a negative decision was brought in case of request of D.B. to be transferred from Penitentiary Niš to Penitentiary Sremska Mitrovica.

In the first paragraph, content of the request, i.e. reason for the request for transfer is given.

In the second paragraph it is pointed to the nature of the offence that D.B. committed and for which he was sentenced, in detail. In the end of the paragraph, half of the sentence gives the opinion of the expert service that the request of D.B. was justified while in the second part of the sentence it is said that the imposed sentence expires on 20.02.2024.

In third paragraph the report of Security Service of Penitentiary it is stated that D.B. was accommodated in the second pavilion of Penitentiary (this information means nothing without information on categorization) under enhanced surveillance. As well, in this paragraph, in the changed form, the fact that expert service gave its opinion is repeated (no evidence number is given, conclusion of the opinion and who signed it) according to which the change of penal-correctional institution would positively influence the realization of treatment program towards prisoner.

In the special paragraph it is stated that the insight in the act of Penitentiary Sremska Mitrovica was taken (there is a registration number and date) and that the Head of this institution did not give his consent for transfer due to the lack of accommodation capacities. In this part of explanation there is no data that would support the claim of the Head of Penitentiary Sremska Mitrovica, both in the sense of number of prisoners and the structure.

In the fifth, longest paragraph, the author of explanation deals with summarizing of data, where he inconsistently quotes all the facts, in a manner that he puts them in the context of brought decision. There is no doubt that the majority of fact presented, legitimate the decision, however, if one looks at the opinion of "expert service" that the transfer would have positive effects, at least a part of this decision should be dedicated to recommendation to find the solution for the realization of transfer, within the existing possibilities.

Instead of that, in the following paragraph, dissatisfaction of D.B. with the treatment is evaluated as ungrounded, where there is no public presented arguments (source and facts) for this conclusion. In the same text, the author of the explanation, in form of "instruction" points to possibility of lodging an appeal to the Head in case of inadequate acting of an officer.

Such decisions should also have a recommendation to the Head to question the statements from the request and to inform the submitter of the request in understandable argumentative form.

In the end there is information about legal remedy of general type. The decision is properly registered, signed by the person that was legally responsible to bring this decision.

2.6 Decision of Directorate for the Enforcement of Criminal Sanctions: Case I. N.

In case of I.N. whose authorized representative filed an appeal to Directorate for the Enforcement of Criminal Sanctions, in the disposition of the Decision there is a positive decision, i.e. Penitentiary in Sremska Mitrovica is ordered to decide again in the first-instance procedure on the complaint to classification in the lower treatment group.

In the introduction of the Explanation it is stated that in the first-instance procedure the Head of Penitentiary Sremska Mitrovica rejected the complaint related to granted treatment and special rights. The author states that appeal to this decision was filed in due time by the attorney and states, relying on the complaint (without clear sign) that I.N. was transferred from Penitentiary Niš to Penitentiary Sremska Mitrovica, and that due to the fact that Nasković did not violate the discipline in the prison

from which he was transferred, he cannot get the lower category than V1 in new prison and reduction of special rights.

The author of explanation chose to deductive explanation, because first he stated that the complaint was grounded, which should not be practice. Presentation of the contents in inductive discourse where clearly presented facts lead to the conclusion is the best solution both from logical and psychological aspect.

In the explanation it is given that the insight was taken both in the Treatment Program and Directorate's Archive (for both documents registration number and date are visible).

Main conclusion of the author of Explanation is that first instance decision does not have argumentative reasons why it came to the change in the treatment program and annulment of special rights. As well, in the Explanation it is stated that the Decision was unclear and that the facts related to the circumstance of the complaint related to acquired special rights were not defined.

In the continuation of the document, in imperative discourse, it is suggested to first instance organ, to determine factual condition and explain with arguments the classification of a prisoner in inadequate treatment and in relation to gaining special rights.

In the end there is information about legal remedy of general type. The decision is properly registered, signed by the person that was legally responsible to bring this decision.

2.7 **Decision by the Ministry of Justice: Case A.S.**

Appeal to the request for transfer by A.S. was rejected as ungrounded by the Decision of the Ministry of Justice.

In the first paragraph it is stated that Directorate for the Enforcement of Criminal Sanctions rejected as ungrounded the request of A.S. for transfer due to health condition and dissatisfaction with the treatment by authorized prison officers. The author of Explanation states that the authorized representative stated the positive opinion of the Penitentiary expert service (does not state which one exactly) as well as the fact that two prisoners whose representative he is, fulfill the conditions for transfer in the manner in which the number of prisoners in two prisons will not be increased.

In the first paragraph in which the brought decision is explained, it is stated that A.S. was sentenced to 9 years and three months in prison, starting from 19.5.2009 till 19.7.2012. which is for sure a shorter period than given.

Argument of overpopulation was taken as a priority in comparison to the opinion of expert service (Treatment Service) where it was not clearly explained why such a hierarchy of priorities was made in the selection of arguments. Instead of that, the author of the Explanation states with the authority, that the second-instance decision was brought in line with the Law, by which he legitimates discretion behavior of the Head.

Author of the explanation, in a confronting discourse, points to the attorney of A.S. that it is not up to him to initiate the transfer in the given way.

In the part of arguments for a decision to inadequate medical treatment, the author of Explanation uses general information from the Report from Health Care Service (registration number and date given) without presenting the contents of provided medical services and effects. Instead of that, based on the general attitudes and without clear indicators, he gives a positive evaluation of medical services in Belgrade and Niš prisons.

The same discourse was applied in evaluation of justifiability of dissatisfaction with the acting of officers as a reason for transfer. The author of Explanation a priory exposes negative attitude on the opinion of A.S.'s attorney that the position of the prisoner would be worsened if he submitted a complaint to the work of officers, by which he (openly) takes the side of the prison management.

3 Conclusion

Based on the previously given analyses and contents we can conclude the following:

- If we miss out the division in decision, explanation and legal remedy, there is no standardized form of writing decisions. Within these three general parts, on one side there is a dominating bureaucracy simplified language, and on the other side hardly readable and (only) understandable language to the author of the decision, employees within the prison system and in the last instance to the lawyers. As a consequence it has communication exclusion of prisoners which can reduce the realization of prisoners' rights in the part of bringing decisions which actions and in which manner to realize. Namely, that is how the dependence of the prisoner from legal advisor is created or some other person capable to understand the text of the decision and explanation.

- In general, in analyzed decisions, informative, but also manipulative and justifying discourses in addressing prisoners or attorneys are present.

- Decisions have a function to confirm the lawfulness of the decision itself, i.e. to secure legality to each decision, above all.

- Analyzed decisions do not have educative contents. Instructions (remedies) are formulated in the way that they justify the brought decision pointing to lack of knowledge of the submitter of appeal or complaint. There were cases when the prisoner or attorney were, with informal instruction, directed to the existing procedures although it was about the cases when the prisoner lodged the complaint against persons who were the reason for complaint or who violated the procedure.

- In analyzed documents there is a negative misbalance in connotation of prisoners. It means that, when exposing data about the prisoner, first given data are about the sentence which was imposed to him and actual information on prisoners' behavior which have negative connotation. There is little information in analyzed documents, on condition that there are any, that positively speak about the behavior of prisoners who initiated the procedure, which can create an image that only "bad" prisoners (ab)use the right to file a complaint for the denial of their rights. Whether it is about the abuse of the right to appeal or complaint by the prisoner or it is about justified pointing to violation of prisoner' rights, prisoners' complaint should be observed as an indicator that something is wrong in the system of the enforcement of criminal sanctions. For that reason, connotation of prisoner who point to violation of rights should be, at least, neutral and it means presented both through "negative" and "positive" information. Besides other things, in this way anti-corruption is directly supported because positive ambient for their anti-corruptive engagement is created among the prisoners.

- Sources of data or opinions in significant number of cases are not clearly marked (name, register number and date of creation). As well, in a significant number of cases it is not clearly given which procedures were done in order to get to certain data and who is their author. This is primarily related to the reports of treatment services, security services as well as service under whose competence is a health protection of prisoners. Otherwise, these services are often given one name "expert service" although in one document information was received from only one of these services. In that manner, non-transparency is unnecessarily created. There is no practice to submit the report to which the author of explanation relies on, as additional document.

- It is indicative that the opinions of expert services are very frequently quoted but they never had a decisive role in the decision making. On the contrary, in a great number of cases the Head was

bringing decisions using his discretion right, opposite to the opinion of expert services. As well there were cases when, as a source, reports of Treatment Service program were used in explanations when complaints to procedural issues are in question. (see case F.G.).

➢ Based on analyzed documents it can be clearly seen that authors of decisions perform their job as a routine. In favor of that speak the findings on dominant determined language consisting from formulations that repeat both within one decision and within all the analyzed ones, than copying of almost all paragraphs and use of informal names, such as "expert" service. We came across material mistakes related to the length of sentence and date of leaving the prison.

➢ In favor of relevance of the presented findings speak explanations in the only one positive decision we analyzed. As an argument to return to first-instance deciding, in the decision brought by the Directorate for the Enforcement of Criminal Sanctions, exactly the evidence that we found in other analyzed decisions was given. In first line these are lack of argumentative reasons, unclear decision and facts that are not determined in relation to the circumstances of the complaint.

4 Recommendations

Main recommendation that is imposed based on the conclusion of the analysis of the content is a need to establish communicative form that would primarily contribute to:

- Higher level of information on the process of bringing decision,

- Existence of possibility for legal and any other remedies which would be in function of fulfillment of rightand inclusion of prisoners as well as improvement of the integrity on the level of institutions within the system for the enforcement of criminal sanctions.

This should bring to the increase of transparency of the administrative procedure itself and reduction of space for discretion powers in decision making, but also to a higher readiness of prisoners to report the violation of rights and procedures.

Concrete recommendations per parts of the decision:

- Disposition:
  - To present the identity of the prisoner in the manner that only in this part of the document he is treated as a prisoner, while in the other parts of the document he is addressed only with the name and last name.

- Explanation:
  - To use inductive approach in presenting the source and data per segments and in the whole and to avoid conclusions without clear sources and data,
  - To give name for every source, date of creation, identification number, where it is located and the author. For the clarity of the text these data can be referenced to in the foot note,
  - To avoid words that have burdened or doubtful meaning in positive or negative context,
  - In the part where conclusion is presented we recommend to give normative framework, summarized defined facts and in the end to present the decision,
  - When speaking about the decision, anticipated impact of the decision to the re-socialization process of a prisoner should be given, together with the expected results,
  - In explanation of the decision we recommend to give similar or same examples of positive practice which was a consequence of same or similar decision.

- New elements of the document:

- To introduce new practice according to which a prisoner or his attorney would be entitled to **official explanation** of the whole or a part of decision by a decision maker or a person delegated by him/her.
- **Recommendation or proposal** to implement activities or measures that will improve the position of a prisoner or integrity of institution.
- To introduce practice to, based on the request of a prisoner or attorney, to provide **sources** based on which the decision was brought **together with the decision**, sources, if not in any other way then in e-form or printed paper, at the expense of the institution that possesses the document which has the character of source.

5. APPENDICES: Three out of seven analyzed documents.

REPUBLIC OF SERBIA
Ministry of Justice
Directorate for the Enforcement of Criminal Sanctions
Penitentiary Požarevac-Zabela
No 07-12913-2/2011-01
Date 15.09.2011
Požarevac
KD

Jovanović Milan
-attorney-

18000 Niš
Piramida 2 sprat lokal 203

In relation to your complaint reated to the initiation of the transfer procedure of prisoner F.G., who is serving prison sentence in this Penitentiary and by which you require Head of Penitentiary Zabela to propose the above mentioned to the Director of Directorate for the Enforcement of Criminal Sanctions for transfer, hereby we inform you, that pursuant to the Article 114 of the Law ofn the Enforcement of Criminal Sanctions, the first instance procedure was conducted, and attached you will find the brought Decision. As well, we inform you that the prisoner received the reply to the submission related to transfer No 702-11146/2011-01 from 25.08.2011.

Attachment: Copy of the Decision

Head of Penitentiary Zabela
Željko Gradiška

REPUBLIC OF SERBIA
Ministry of Justice
Directorate for the Enforcement of Criminal Sanctions
Penitentiary Požarevac-Zabela
No 07-12913-2/2011-01
Date 15.09.2011
Požarevac
KD

Based on Article 114 Paragraph 4 of the Law on the Enforcement of Criminal Sanctions (Official Gazette of the Republic of Serbia No 85/05, 72/09 and 31/2011) by deciding upon the complaint of prisoner F.G., Head of Penitentiary Požarevac-Zabela brings the following:

DECISION

Complaint of the Attorney of prisoner G.F., Personal Identification Number 2979, declared on 07.09.2011. and received in this Penitentiary on 13.09.2011 is **REJECTED AS UNGROUNDED.**

Explanation

Attorney of prisoner G.F., Personal Identification Number 2979, submitted a complaint on 07.09.2011. addressed to the Head of this Penitentiary, as a competent to decide in first instance, in sense of Article 114 Paragraph 4 of the Law on the Enforcement of Criminal Sanctions. In the complaint the attorney says that due to the mistake made by someone from the staff of Penitentiary Požarevac-Zabela, prisoner G.F. lost right to transfer and requires to make this up by submitting the proposal to Director for the Enforcement of Criminal Sanctions for transfer of the above mentioned to Penitentiary Niš. The Attorney says that on 27.04.2011, he sent a letter to the prisoner in which he informed him that the conditions for his transfer were fulfillers and he delivered to the mentioned a Request for transfer which the prisoner submitted to the treatment officer in regular procedure without getting any receipt on submission. Since there was no reply to the mentioned request, on 11.07.2011. attorney addressed the Directorate for the Enforcement of Criminal Sanctions over the phone and they informed him that they had not received any request from prisoner G.F. in that period. After that, staff from the register office of Požarevac-Zabela confirmed that there was no registered evidence on sending the mentioned request in the Commander's book and that no one knew what had happened to it, so that the attorney thinks that the prisoner lost the right he was entitled to, by someone's negligence.

By questioning the statements of the complaint in sense of Article 114 Paragraph 4 of the Law on the Enforcement of Criminal Sanctions, Head of Penitentiary determined that the complaint **is ungrounded.**

By considering the statements in the complaint of a prisoner it is determined that the prisoner did not submit the request to a treatment officer in regular procedure so that he could not get any receipt on submission, and that in the Register Office it was determined that the request was not registered in the Commander's book of the Pavilion, i.e. there is no evidence that the request was sent to the Ministry of Justice - Directorate for the Enforcement of Criminal Sanctions. Related to the required transfer and based on the report of Treatment Service from 24.08.2011. Head of Penitentiary decided that there were no grounds for transfer to Penitentiary Niš and that the prisoner received reply to a submission about the above mentioned No 702-11146/2011/01 from 25.08.2011.

Bearing in mind everything mentioned above, it is decided as in disposition of the decision.

Legal Remedy: Prisoner who is not satisfied with the decision is entitled to appeal against it to the Director of Directorate, within 8 days from receiving the decision, via this Penitentiary.

Head of Penitentiary Zabela
Željko Gradiška

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REPUBLIC OF SERBIA
Ministry of Justice
Directorate for the Enforcement of Criminal Sanctions
No 116-06-1/2012-05
Date 23.01.2012.
Belgrade
KD

Ministry of Justice of the RS- Directorate for the Enforcement of Criminal Sanctions, Coordinator for operational and security affairs, supervision, legal and general affairs, informatics and analytics in the Directorate for the Enforcement of Criminal Sanctions, based on the authorization of the Minister of Justice No 021-01-2/11-03 from 08.02.2011, based on the Article 114, Paragraph 6 of the Law on the Enforcement of Criminal Sanctions Official Gazette of the Republic of Serbia No 85/05, 72/09 and 31711) by applying Article 232 of the Law on General Administrative Procedure (Official Gazette of SRY, No 33/97, 31/2001" and Official Gazette of the Republic of Serbia no 30/2010), by deciding upon the complaint of the attorney of prisoner N.I., Lawyer Jovanović Milan from Niš, filed against the decision of Penitentiary in Sremska Mitrovica No 24-19/11-379 from 2.12.2011, brings the

DECISION

The Decision of the Head of Penitentiary in Sremska Mitrovica No 24-19/11-379 from 2.12.2011 is annulled, based in the complaint of prisoner N.I. and the subject is sent back to first instance organ for repeated procedure and deciding.

Explanation

Complaint of the prisoner N.I. related to his treatment and awarding of special rights was rejected by the Decision of the Head of Penitentiary in Sremska Mitrovica No 24-19/11-379 from 2.12.2011.

Prisoner's attorney lodged an appeal against the above mentioned Decision in due time in which he repeated the complaints, adding that the prisoner was, by the Decision of Directorate, transferred from Penitentiary Niš to Penitentiary Sremska Mitrovica , that during sentence serving in Penitentiary Niš he used special rights of Group B1 and that there are no reasons, bearing in mind that the prisoner did not commit disciplinary offences and that the transfer may not be a reason for classification in more unfavorable treatment, to stay in the group with a lower degree of rights. He asked for his complaint to be adopted and that the prisoner is enabled to continue with sentence serving in group B1.

Having considered the subjects in this administrative matter, evaluation of complaint and opinion of institution related to it, second instance organ found that the complaint was grounded.

Based on the insight in first-instance decision No 24-19/11-379 from 2.12.2011 it was determined that it was written in the decision that the prisoner was, at the admission and based in the recommendation of expert team, classified in Group B2 and that there is no obligation of institution to maintain the same group for the prisoner and rights he had had prior to transfer from one penitentiary to another.

Having taken insight in the decision on treatment program No 24-28/11-739 from 14.9.2011 it was determined that the prisoner was assigned to a closed part of the prison, group B2 and that the high level of risk was estimated. Having taken insight in the archive of the Directorate, it was defined, that the prisoner, based on the proposal of the Head, by the decision 702-00-664/2011-05 from 16.08.2011, was transferred from Penitentiary Niš to Penitentiary Sremska Mitrovica, aimed at more successful re-socialization process. During sentence serving in Penitentiary Niš, the prisoner was in Group B1.

In the first-instance decision of the Head based on the complaint of the prisoner, it was emphasized that the prisoner was classified, based on the proposal of expert team, based on the decision on treatment program brought after the transfer of prisoner to Penitentiary Sremska Mitrovica, but without argumentative reasons why it came to the change in treatment program and the prisoner was in group B2 and did nit use special rights. Explanation of the decision is unclear, facts related to circumstances from the complaint of the prisoner were not determined and which related to acquired special rights, i.e. whether there were decisions of Penitentiary on awarding, i.e. deprivation of special rights. In line with the provisions from articles 58 and 59 of the Rulebook on House Rules , a prisoner, within the treatment program, may be granted special rights and in case of transfer the prisoner uses kind and volume of granted special rights he had not used in the month in which the transfer was done, That is why, the first instance organ will, in the repeated procedure, after careful re-consideration of complaint, determine whether the prisoner used special rights by the decisions of Penitentiary. If special rights were used, the same may be taken away, only at the proposal of expert team and by the decision of the Penitentiary, pursuant to the provisions of Article 115 of the Law on the Enforcement of Criminal Sanctions and provisions of Article 31 of the Rulebook on treatment, treatment program, classification and subsequent classification of prisoners.

In the repeated procedure first-instance organ is obliged to carefully reconsider the complaint of the prisoner and to, based on the completely determined factual condition, by acquiring needed evidence and decisions of the Penitentiary related to given complaints of the prisoner, argumentative explanation related to classification of the prisoner into appropriate treatment, and related to acquiring special rights during sentence serving, in line with the Law and quoted Rulebook on treatment, bring the appropriate decision.

Due to the above stated, and pursuant to the Article 232, Paragraph 2 of the Law on General Administrative Procedure, it is decided a in the Disposition of the Decision. First instance organ is in the repeated procedure obliged by the remarks of second instance organ in relation to the procedure in sense of Article 232, Paragraph 2 of the Law on General Administrative Procedure. The prisoner is entitled to lodge an appeal against the new decision.

Coordinator
Velimir Vidić

To be delivered to:

Prisoner N.I., via Penitentiary in Sremska Mitrovica
Attorney Jovanovic Milan, TC Dušanov Bazar Piramida 2. sprat, lok 203
Penitentiary in Sremska Mitrovica
Archive

Head
Aleksandra Stepanović

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REPUBLIC OF SERBIA
Ministry of Justice
Directorate for the Enforcement of Criminal Sanctions

Penitentiary
No 070-1532/2012-01/03
Date 28.02.2012
Niš

Based on Articles 27 and 114 of the Law on the Enforcement of Criminal Sanctions (Official Gazette of the Republic of Serbia No 85/05, Amendments 72/09) and Article 71 of the Rulebook on House Rules in Penitentiaries and District Prisons by applying Article 232 of the Law on General Administrative Procedure (Official Gazette of the Republic of Serbia No 27/06), by deciding upon the complaint No 07-1069/2012-01/3 from 10.02.2012, of prisoner B.K., Personal Identification Number 8638, after conducted procedure, Deputy Head of Penitentiary of Penitentiary brings the

DECISION

to REJECT the Complaint of prisoner B.K., Personal Identification Number 8638, No 07-1069/2012-01/3) from 10.02.2012, as ungrounded.

Explanation

On 10.02.2012 attorney of prisoner B.K., Lawyer Milan Jovanovic, filed a complaint by which he requires delivery of extract from medical file of a prisoner for the period from September 2011 till the day of submission of the request as well as a copy of the first page of the file where the data about chronic diseases of prisoner are written.
Pursuant to Article 114 of the Law on the Enforcement of Criminal Sanctions and Article 71 of the Rulebook on House Rules in Penitentiaries and District Prisons statements from the complaint were carefully examined and necessary evidence was presented:

- taken insight in the medical file of the prisoner
- taken insight in the statement of Health Care Service from 24.02.2012.

In the procedure of determining justifiability of the complaint, based on the presented evidence it was defined that there were no omissions in the work of state officers. Bearing in mind that the copying machine in Penitentiary Niš has been out of work for a longer period of time from technical reasons, at the moment there is no possibility to copy the required medical documentation. We note that required medical documentation will be provided to the above mentioned when technical possibilities allow, i.e. when the copying machine is repaired.
For the reasons presented it is decided as in the disposition of the decision.

Legal Remedy: Against this decision an appeal may be filed to Director of Directorate for the enforcement of Criminal Sanctions within 8 days upon the receipt of the Decision. The appeal is to be submitted to Penitentiary Niš for Director of Directorate for the Enforcement of Criminal Sanctions.

Processed by: M.M — Deputy Head
Controlled by: G.M. — Božić Gordan

G/ Concluding part

Basic attitude that we were guided by during the realization of the project is that the purpose of the existence of prisons and staff employed in them is correctional treatment of prisoners and preparation for their normal inclusion in the society and functioning after the served sentence.

Insufficiently precise formulation of certain articles of the Law on the Enforcement of Criminal Sanctions leaves a space for free interpretations which opens a way for different misuses, including possible corruption. This is one more observed system lack which was not considered in the text before and should be born in mind because it influences different levels of problem and system.

Having analyzed gathered information, the following was concluded:

(C) In all processed cases the prisoners were convinced that their rights existed, that legal conditions were fulfilled and that there were no legal obstacles for the requests to be satisfied. Hunger strike was, at the moment of the beginning of hunger strike, ultimate and only measure for the realization of their rights. By comparing the contents of the reasons for hunger strike and adequate article of the Law on the Enforcement of Criminal Sanctions or Rulebook, it could be concluded that the requests of prisoners in the observed cases were in everything based on the certain articles of mentioned regulations.

(D) In the observed period, in total, 34 complaints were submitted. 18 replies were received. To 16 submitted requests no reply was received which makes 47% of all the requests, In 18 cases to which replies to prisoner's complaint/request was received, one was positively solved and 17 negatively (replied to 53% of requests:3% positive, 50% negative, out of total number of submitted ones).

In the observed period in eight cases reply was received to submission or request of a prisoner within the deadline anticipated by the law. In 10 cases the reply of competent organ to request or submission of prisoners was not received within the deadline anticipated by the Law on the Enforcement of Criminal Sanctions or Law on General Administrative Procedure (two months).

Out of 34 submitted requests, only one was positively solved.

(E) 34 complaints/requests were submitted for nine violated rights in 42 turns.

1. Right to complaint - 16
2. Right to humane treatment - 6

3. Right to transfer to another penitentiary - 6
4. Right to health care protection - 4
5. Right to visits/general rights of prisoner - 3
6. Right to accommodation and right to leisure activities - 3
7. Right to classification through the admission and classification of a prisoner - 2
8. Religious rights and religion - 1
9. Right to presentation of evidence in disciplinary procedure – 1

Denied rights of prisoners are consequence of two types of lacks- system ones and omissions in the work of certain services.

Conclusion

1. Elimination of system lacks is for sure a way that would bring to significant decrease of total number of disrespect of prisoner's rights. In that case the omissions of services would be of lesser influence and would belong to a group of sporadic incidents. Consequently, it is certain that the number of hunger strike cases would reduce.

2. Process of lodging complaints falls into a group of protection measures which are ``the different kinds of measure which enable penal system to function smoothly while safeguarding the rights of those deprived of their liberty.``(``Monitoring places of detention: a practical guide for NGOs``/OSCE)

Commentary to Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, Rule 70: ``……Prisoners must have ample opportunity to make requests and must have avenues of complaint open to them both within and outside the prison system. The prison authorities shall not obstruct or punish the making of requests or complaints but shall facilitate the effective exercise of the rights embedded in this rule. This does not preclude the introduction of legal mechanisms to deal summarily with minor issues. …….

…….The competent authorities should deal promptly with requests and complaints and should accompany this with reasons making it clear whether action will be taken and if so, what action. This also applies to requests or complaints from prisoners‘ relatives or organisations referred to in Rule 70.6. ……..``

In the field of the process of lodging complaints, based on the presented sample, we consider that the System of the Enforcement of Criminal Sanctions in Serbia should undergo significant changes so as to harmonize with preferred standards recommended in the European Prison Rules by the Council of Europe.

Aleksandar Cvejić, Verica Milošević, Lidija Vučković

REPRESENTATION IN DISCIPLINARY PROCEDURES- RESULTS OF AND RESULTS OF ANALYSIS

Introductory explanation

During one year of realization of activities, legal aid was provided to prisoners, potential victims and/or victims of torture and/or inhumane treatment in disciplinary procedures initiated against them and are related to the incidents where physical force was used by Security Service.

Target group were prisoners serving prison sentence in Penitentiary Niš, with one control case related to a prisoner serving sentence in Penitentiary Sremska Mitrovica.

Basic activity during realization of the project was provision of legal aid in form of representation in disciplinary procedures initiated against prisoners. Besides defense in disciplinary procedure, as an additional activity appears submission of reports against Penitentiary officers for whom there was a grounded suspicion that they had exceeded the powers for the use of physical force, or tortured or inhumanely treated the prisoners.

In the observed period, representation covered seven prisoners who contacted the CHRNis and signed the authorization for the lawyer of the Center. Out of these seven cases, five relate to acting of Security Service in Penitentiary Niš, one to acting in Penitentiary Sremska Mitrovica and one to Security Service of District Prison in Vranje.

A. Short overview of incidents in individual cases, based on prisoners' statements, in which force was used against prisoners

- Those represented in disciplinary procedure –

1. I.V., Personal Identification Number 8258, Penitentiary Niš

On 25.01.2011. when going out for a walk, together with other three prisoners, prisoner V.I., as he personally stated, clumsily fell, slipped on the ice and fell at which occasion he had a light injury. Then he swore aloud, but not the commander who took him out for a walk, nor anyone else, but the ice and his own clumsiness. He pointed out that there was no reason to curse anyone because the guilt for the fell was exclusively his.

At that moment, because of the fell and swearing, three officers of Security service took him to another yard. This is where commander Đ. insulted him, slapped him and hit him with a night stick and there were two more commanders who the prisoner did not want to name. He said that there were also three more prisoners present when the incident happened, he named them and said they were ready to testify about that in disciplinary procedure.

Based on prisoner's statement, after the use of force and hitting with official night stick by the commander Đ., he was not taken to medical examination to the prison doctor.

2**. B.T., Personal Identification Number 9084, Penitentiary Sremska Mitrovica**

According to the statement of prisoner, on 21.03.2011. around 21.30, there was a verbal dispute among several prisoners in a TV room. He participated in that dispute as well. The situation calmed down after several minutes.

Then 4-5 members of Security service entered the TV room and randomly singled out B.T. and few more prisoners ordering them to go to the so-called discipline part on the ground floor of the building. Then they lined them up, with their faces against the wall and arms on their back. Then they brought them in the room not "covered" by cameras, one by one and they were led by the commander M.B., called "Rumeni".

Prisoner M.P. was brought in before B.T. and he heard that they were slapping him. When they brought B.T. in they put on the gloves they use at regular search of prisoners. Tables in the room were spaced so that there would be more space. They ordered him to put his arms on the back and they started to provoke him verbally: "You are going to solve the problems here?"

Then one of the commanders strongly pushed him with hands into breasts that he fell and all three commanders started to beat him with nightsticks. He covered head with hands but they continued to beat him. At one moment they fell over him as they swung. He lost consciousness for two times and they were bringing him back with water and continued with beating. Then they hand cuffed him on his back and beat him with a big wooden stick, similar to baseball one and pulled him tied on the floor, telling him all the time "What's up now? Are you a rowdy now?"

He told them that he suffered from Hepatitis C, hernia and kidney stones and to stop beating him, to better kill him but they continued with the beating all over his body and genitals. They set him against the wall out of the room, called him ``animal`` and other humiliating names. Then, he finally fainted.

Commanders called a prisoner known as "Prika" as well as Ž.A., who took him in a blanket to the hospital because he was so beaten that he could not stand on his feet. He had visible bruises on his thighs (inner side and on his back), wrist bone on the right arm was fractured.

They refused to take him to x-ray, the doctor only roughly examined him. Supervisor from the first building, as soon as he saw how the prisoner looked like, took him back to the hospital for x-ray examination, but the doctor refused to do so.

Prisoner was on a hunger strike for 10 days because of this incident. The Head of Penitentiary received him on 04.04.2011. and told him that he was not a doctor and that he did not understand anything from the area of medicine. At the moment when the lawyer first met the prisoner, two weeks after the incident, the prisoner still had visible bruises.

3. D.M., Personal Identification Number 7425, Penitentiary Niš

According to the statements by the prisoner, in the night between 21.08.2011. and 22.08.2011. around 01:35 several members of Security Service entered the room in which D.M. was with two more prisoners, based on the call of one of two prisoners who were in the room with D.M. He reported that D.M. slapped him.

Then, at least three members of Security Service started to beat D.M. with their official nightsticks on legs, arms and back. After that they required him to sign the statement that he refused the order to stand up from the bed and that Security Service members hit him for two times, trying to fight down his resistance.

The guards took him to the doctor's at his own request, but according to D.M., the doctor registered in his medical file only a few hematomas on his back, not all the other injuries, which he gained during the incident.

4. A.M., Personal Identification Number 8937, Penitentiary Niš

The prisoner was in the Prison Hospital due to mental problems. On 10.11.2011. around 22.30. during the broadcast of basketball match Partizan - Real Madrid, he asked from the commander to be taken to the doctor's because he had psychical problems. The Guard refused to take him to the doctor for what he protested and after that he hit his head in the bars.

After that, a member of the Security Service, whom he know by the nickname "Pit-bull" tied hands behind the back, and then called, over the radio, other commanders who had not been present and told them that he was attacked by A.M.

Then, the members of the Security Service, while he was kneeling on the ground, punched him on the head, beat him with nightsticks on back and kicked him all over his body. Witnesses of this event are V.M., M.M., M.P. and A.M., who later told him that so many commanders were on him, that they couldn't see him at all.

After the end of beating the prisoner was taken to the doctor and he said that the injuries were recorded in medical records. During the intervention, his head and back were injured, where he had many hematomas. After the examination by a doctor in the Penitentiary Niš hospital, he was taken to the city hospital, to neurology department, to have his head x-ray shot.

- those on whose behalf the disciplinary report was submitted -

1. D.M., Personal Identification Number 7425, Penitentiary Niš

Incident described in previous part.

2. M.P., Personal Identification Number 8014, Penitentiary Niš

On 29.03.2011. the prisoner was taken out of the Penitentiary for a court trial. When he was brought back to Penitentiary, he was searched at the gate No 19 and in the bread he brought from the City, the guards found hidden cell phone.

There were four or five guards who also searched him and he was ordered to take off all his clothes except for the underwear. Then they darkened the room in which the search was done, by pulling on dark curtains on the windows. After that they punched him and when he fell on the floor they kicked him and beat him with nightsticks on his head and body.

At that occasion he got visible head injuries, numerous hematomas all over his body, a scratch on his ribs and few days after this incident he urinated blood.

He was taken back to his cell in such condition and, only on the second day after the incident was he taken to the doctor who, based on the prisoners' opinion, recorded all the injuries in the medical file.

Based on prisoner’s statement, after the incident itself, he was being persuaded by the Head of Security Service and one Supervisor not to submit a report against officers. At the same time, another prisoner who was in the cell with M.P. at that time, was being persuaded by the Guards to persuade M.P. not to submit disciplinary report.

- those who gave up for some reason from submitting the disciplinary report or disciplinary procedure was not initiated against them –

1. S.O., Personal Identification Number 5254, Penitentiary Niš

On 15.06.2011. the prisoner was taken to medical examination to the doctor by the member of Security Service whose name he did not know, but he knew their badges numbers 1522 and 1604.

While they were taking him to the doctor and back, he was beaten on the back and legs. As a consequence of this he had bruises all over his body, on legs and back. He did not report these injuries to doctor because he thought that they either don't register them properly or they don't register them at all.

He thinks that the aim of abuse was to lead him into self-injury, by which he would commit a disciplinary offense. He is convinced that this is a continuation of psychological abuse to which he has been exposed continuously from December 2009, when he was deliberately placed in a room with two prisoners with whom he had a bad relationship and who harassed him physically and mentally for few days. They did this in a way that they abducted his prescribed therapy, took away personal belongings, threathened him and physically abused him. For that reason he self injured at least for one time.

2. V.I., Personal Identification Number 9369, Penitentiary Niš

On 23.11.2011, the prisoner was arrested and transferred to District Prison in Vranje from which he escaped 8 months ago.

The next day, around 9:00 pm, a member of the Security Service, whom he knew by the nickname "Micko", approached him and insulted him and cursed him without any cause while V.I. just kept silent. Then this guard kicked him hard in the ribs on the right side, so that he fell on the floor. The guard continued to kick him for few minutes more, mostly on the back, all the time cursing and insulting him. He was then transferred by a Prison car to Penitentiary Niš. He was there examined by a doctor to whom he reported that he had been beaten, but the doctor refused to register that in the medical file as well as to list the injuries.

B. Representation in disciplinary procedures

B1- Course of disciplinary procedure

Course of disciplinary procedure comprises:
- Delivery of inviting letter for disciplinary rapport to a prisoner, and eventually proposal for initiation of disciplinary procedure;
- Reading of Disciplinary report;
- Prisoner's defense;
- Hearing of witnesses;
- Insight in written evidence;
- Final word;
- Duration;
- Number of sessions in the case;
- Decision on Disciplinary measure.

Disciplinary procedures were conducted in cases of the following prisoners:

1. I.V.

On 23.02.2011 in the premises of Penitentiary Niš a session of disciplinary commission was held in the process of determining responsibility of prisoner V.I.

Senior supervisor Đ. submitted a disciplinary report against prisoner I.V. for alleged severe violation of discipline- *Refusing to execute lawful order issued by officer due to which occurred or could have occurred a serious consequence from* Article 145 Paragraph 1 Point 10 of the Law on the Enforcement of Criminal Sanctions. Disciplinary offence was allegedly committed on 25.01.2011. when the prisoner, based on the statements in disciplinary report, the prisoner cursed senior commander during taking out for a walk.

The session of disciplinary commission lasted about 15 minutes, after a delay of nearly an hour. Prisoner I.V., after a confidential conversation with his attorney, presented his defense that was truly registered in the minutes by the President of the Commission. Then the commander, who was allegedly present during the critical event, was heard as a witnes.

During the disciplinary proceedings, related to the use of physical force against the prisoner, the following was said: the convict said that he was subjected to physical force, and the commander said that he (the prisoner) was subjected to isolation measure.

Prisoner I.V. said that other three prisoners were present when the incident happened, two of whom are still in Penitentiary Niš. To the third one the penalty expired, which was confirmed by the heard witness - the commander. The defense required to hear in the procedure at least these two prisoners as direct witnesses of the incident. This, even more for the fact that swearing is not arguable, but the content of cursing and to whom it was addressed.

The proposal of the defense was rejected with verbal explanation of the President of the Commission that “required hearings are not necessary since there are already questioned officers who confirmed that the incident took place as it stands in the report”.

Simultaneously with the decision on rejecting the proposal of the defense to hear the witness, the Commission immediately announced that prisoner I.V. was pronounced guilty and sanctioned with a disciplinary measure of solitary confinement during whole night and day in duration of 10 days. After that the defense pointed to that in this way the procedure was shortened contrary to the provisions of the Law since the attorney and defendant were not given right to present their final words before the bringing of the decision by the disciplinary Commission. After this intervention, the attorney presented his final word that was not registered in the Minutes, the decision was not changed and it was not deliberated on the final word.

After the receipt of written decision by the Disciplinary Commission, prisoner's attorney lodged an appeal to the Directorate for the Enforcement of Criminal Sanctions. The Directorate rejected the appeal as ungrounded.

2. B.T.

A commander submitted a disciplinary report against prisoner B.T. for alleged severe violation of discipline - *Violence towards other person* Article 145 Paragraph 1 Point 5 and Refusing *to execute lawful order issued by officer due to which occurred or could have occurred a serious consequence* from Article 145 Paragraph 1 Point 10 of the Law on the Enforcement of Criminal Sanctions committed on 22.03.2011.

According to the statements in disciplinary report, B.T. physically attacked and punched other prisoner in a TV room in Penitentiary Sremska Mitrovica, without any reason and cause.

The explanation of the Requirement for initiation of disciplinary procedure does not include the use of physical force over the prisoner.

According to the statements given by the prisoner, he and other actors in the incident in TV room, peacefully, without resistance, based on officer's (commander) order went down to the ground floor of the building, after the event described in the Requirement for initiation of disciplinary procedure. There they hand-cuffed them, only after they entered the room not covered by cameras. Prisoners did not resist in none of the cases. In this way, the legal conditions from which the need for use of coercive measures would occur were not fulfilled.

The session of Disciplinary commission started on scheduled time and lasted for 30 minutes. Prisoner B.T. exposed his defense which was registered in the Minutes, by the President of the Commission, in a way that it minimized the statements of the prisoner on the abuse by the commander while the alleged incident in the TV room was overemphasized. Due to that the attorney had to intervene aimed at registering in the Minutes all the data of importance for rightful decision making. After that certain corrections were made, in some parts the statements of the prisoner were registered, by which we may consider that the Minutes were produced in line with the Law.

The prisoner in his defense stated that other prisoners were also present when the incident happened. The defense asked to have them heard in the procedure as well as to face prisoner B.T. and prisoners S.B. and B.S., who by personally written statements produced immediately after the incident, accused him as an actor in it.

This proposal was rejected as unneeded.

Then the Commission announced that prisoner B.T. was pronounced guilty and sanctioned with a disciplinary measure of solitary confinement in duration of 15 days, during whole night and day.

Prisoner's attorney submitted the complaint in the legal deadline to the Director of Directorate for the enforcement of criminal sanctions. The appeal was rejected as ungrounded and first instance decision was confirmed. On 26.06.2011. on behalf of the prisoner, the attorney initiated administrative procedure in Administrative court in Belgrade, with a lawsuit to annul the decision of the Director of Directorate. The procedure per this lawsuit is still underway.

3. D.M.

A supervisor submitted a disciplinary report against prisoner D.M. for alleged severe violation of discipline - *Violence towards other person* Article 145 Paragraph 1 Point 5 and Refusing *to execute lawful order issued by officer due to which occurred or could have occurred a serious consequence* from Article 145 Paragraph 1 Point 10 of the Law on the Enforcement of Criminal Sanctions committed on 22.08.2011. According to the statements in the disciplinary report prisoner D.M. tried to rape and ill-treat the damaged - prisoner A.G., in the other pavilion, in cell No 14, around 01.30.

The session of Disciplinary Commission started at scheduled time and lasted for around 30 minutes, with interruptions for printing the statement of the witness and the Minutes, since no other works except for one in the Management building. Prisoner D.M. presented his defense which was registered in the minutes by the President of the Commission poorly and shortest possible, but formally and in line with the law.

The defense does not know whether the use of force and nightstick was properly documented, as prescribed by Law. In the list of acts in the subject there is a report of a doctor in relation to health care condition of prisoner A.G. with stated scratch on the nose as well as the report on medical examination of D.M. with stated hematomas on the back ("two to three").

At the proposal of the Defense damaged A.G. was heard. He stated that at that occasion D.M. "tried to rape him and "Old man" (prisoner Ž.N. – third inmate in room 14) and that he ill treated them". When the defense asked him why in his written statement immediately after the incident he did not write that D.M. tried to rape "Old Man" as well, as he stated on the day of hearing, the witness said that it was because he just ill treated the Old Man.

Based on the statements of this witness three guards entered the room at that occasion while in the commander's Đ. note, based on which disciplinary report was written, it says that only he (commander Đ.) entered the room and that only he beat D.M. on back, with nightstick, because he did not obey the order to get out of the room.

The prisoner in his defense said that there were three officers from Penitentiary Niš present when the incident happened which was confirmed by the damaged, as well which is contrary to the statements from the official note based on which the procedure was initiated. Because of that the Defense required to, aimed at determining factual condition in the procedure, hear as witnesses, supervisor S.C. and M.Đ., for whom je D.M. claimed that he was the main one who gave orders and executed his beating and who wrote the official note on the incident.

This proposal was rejected, without any explanation.

After that the Commission announced that prisoner D.M. was pronounced guilty for the disciplinary offense from Article 145. Paragraph 1 Point 5 and punished with disciplinary measure of solitary confinement during the whole day and night in duration of **5** days.

Upon the receiving of the Decision, the attorney appealed to the Director of Directorate, in legal deadline of three days after receiving written decision. The appeal was rejected as ungrounded and first-instance decision was confirmed.

4. A.M.

A supervisor submitted a disciplinary report against prisoner A.M. for alleged severe violation of discipline - *Refusing to execute lawful order issued by officer due to which occurred or could have occurred a serious consequence from* Article 145 Paragraph 1 Point 10 of the Law on the Enforcement of Criminal Sanctions, committed on 10.11.2011. around 22.30.

Disciplinary Commission session was postponed for two times. First time because prisoner A.M. engaged an attorney, so the practice of disciplinary commissions in Penitentiary Niš is that in such cases the session is postponed in order to make preparations. Next time the session was scheduled for 18.01.2012. but it was also postponed by a letter of the President of Disciplinary Commission because one of the Commission embers was prevented from participating in it. In that letter the attorney was informed that the session was scheduled for 30.01.2012. at 10,00.

This session of Disciplinary Commission started with a delay of 25 minutes and it lasted around 30 minutes. Prisoner A.M. presented his defense which was registered in the Minutes of the session by the President of Commission in a way that it minimized prisoner's statements on abuse by a commander while overemphasizing the alleged incident in prison hospital. Based on the statements from disciplinary report based on the official note of the commander, A.M. used a moment when the commander took him to the doctor on the lower floor, snatched and hit his head in the wall for two times and then, fell on his back and hit his head on the floor. Although prisoner A.M. thoroughly described how he was beaten by several commanders, this part of his statement was in the lightest possible form registered in the Minutes, and only after the attorney's intervention.

In his defense the prisoner said that the Supervisor persuaded him, immediately after the incident, not to declare in the written statement that he was beaten by the commander. This statement of the prisoner was registered in the Minutes of the Disciplinary procedure.

Since the prisoner stated in his defense that other prisoners were present when the incident happened the defense required to hear these persons in the procedure as direct witnesses of the event.

This proposal was accepted, contrary to the existing practice in such procedures. Disciplinary Commission, after short deliberating, in line with the law, decided to hear the witnesses at the following session scheduled for 24.02.2012.

On 06.03.2012. second session of Disciplinary Commission of Penitentiary Niš was held, in the procedure against prisoner A.M.

Witnesses which prisoner A.M. named as ones present when the incident happened were invited to this session of Disciplinary Commission. All three have been in the prison hospital for a longer period of time due to health problems.

The common thing in the statements of all three witnesses is that "they know for which incident they call them" but that "they don't remember anything because they have psychical problems" (brain attack and kidney cancer prisoner V.M.; depression prisoner M.M.) and prisoner A.M. “know why they call him, that he was in the prison hospital on that day, but that he did not hear or see anything and does not want to testify”. All three of them practically refused to speak about the incident, and the only one who explicitly said that was A.M.

It should mention that it was very difficult to hear what the witnesses said because they spoke silently while on the other side of the room there was a group of commanders who talked loudly while drinking coffee and laughed even louder.

For this session, based on the request of the defense of prisoner A.M., and in line with the law, the report of Medical Service was delivered, from where it could be seen that after the incident doctor diagnosed injuries on the back, thighs and two hematomas on the back of the neck- size 3 x 3 cm and other 2 x 2 cm.

In the official note of senior commander D.J., which was initial act for initiation of disciplinary procedure against A.M., it is said that this commander “found A.M. hitting his head in the bars for several times” after which, after he took him to medical examination, " A.M. hit his head in the wall for few more times, bounced from the wall, fell on the concrete floor and hit his head (back part) on the ground". After that Commander D.J. "used force and two-three times beat A.M. with a nightstick on his back and arms after what he stopped resisting."

By comparing the contents of commander's official note and medical records, the defense came to the conclusion that ascertained injuries in the medical report did not match the injuries that can occur due to the use of coercive means as it was written in the official report, but that they completely match the description of events given by prisoner A.M. For example, it remains unclear how A.M. received two injuries on the back of head, when, according to the commander's official note, he fell only once and hit his head on the floor.

The defense pointed to this illogical thing to the members of the Commission, but casual comment, of the President of the Commission, not registered in the Minutes, was that A.M. was probably rolling on the floor and thus gained the second injury on the back of his head.

That is why the defense proposed to hear Commander D.J. in the continuation of the procedure aimed at clearing out this controversial situation, After short deliberation, Disciplinary Commission rejected this proposal with explanation that factual condition of the event was cleared out completely even without this evidence.

In the final word of the defense, the attorney analyzed presented evidence and required to free prisoner A.M. from responsibility for disciplinary offense for which he was charged, due to the lack of evidence.
After that the Commission, after short deliberation, announced that prisoner A.M. was found guilty for disciplinary offence from Article 145, Paragraph 1, Point 10 and sanctined with disciplinary measure of solitary confinement in duration of 5 days - on probation two months.

To such decision, defense will lodge an appeal to the Director of Directorate, in the legal deadline of three days upon receiving written decision, which has not happened yet (middle of April).

B2 - Legal analyses

Disciplinary procedures conducted during the project activity related to 2 severe disciplinary offences:

- *Violence towards other person* Article 145 Paragraph 1 Point 5 of the Law on the Enforcement of Criminal Sanctions

- *Refusing to execute lawful order issued by officer due to which occurred or could have occurred a serious consequence* from Article 145 Paragraph 1 Point 10 of the Law on the Enforcement of Criminal Sanctions

In these disciplinary procedures, the Lawyer of the Center for Human Rights-Nis acted as attorney to defendants.

Out of four disciplinary procedures, one was conducted for the offence from point 10, one for the offence from point 5 and two for both offences cumulatively. Three disciplinary procedures were led in front of Disciplinary Commission of Penitentiary Niš and one in front of Disciplinary Commission of Penitentiary Sremska Mitrovica.

In three out of four cases there is direct violation or partial ignorance of Article 158 of the Law on the Enforcement of Criminal Sanctions, in which the disciplinary body is obliged to check and present all the evidence relevant to the decision. Rulebook on disciplinary offenses, measures and procedures towards prisoners envisages in Article 10 that the authority shall be obliged to determine with equal attention all the facts that the defendant is charged with, and those in his favor.

In the above cases, the disciplinary commissions presented only evidence proposed by the submitter of the report- officer and no evidence put forward by the defendant or defense. In one case (D.M.), Disciplinary Commission of Penitentiary Niš did not hear even the submitter of the report- supervisor, who was properly informed-invited and who did not justify his absence. With such conduction of the procedures, defendant's right to defend, provided by the above regulations, the Serbian Constitution and Article 6 of the European Convention for the Protection of Human Rights and Freedoms, was violated.

Only in one of the procedures in front of Disciplinary Commission of Penitentiary Niš (prisoner A.M.) the requirements of the Law on the Enforcement of Criminal Sanctions and Rulebook in this regard were consistently observed.

In addition to this procedural objection related to the course of disciplinary procedure in front of the Disciplinary Commission, as a particular problem should be pointed out taking of personally written statements from persons involved in a potential violation of discipline and from the witnesses. Namely, Article 42 of the Rulebook provides that a written statement by a prisoner about the incident and official notes about the incident should be provided as an annex to disciplinary report, among other documents.

However, none of the Articles in the Rulebook, nor any sub-legal act or Law on the Enforcement of Criminal Sanctions anticipate the obligation of officer to, before creation of this statement, inform the prisoner about the fact that such statement may be used against him in eventual procedure and that he is not obliged to produce such statement. This is an enormous lack, especially when born in mind that the Rulebook anticipates possibility that the prisoner, at the very session of the Commission does not expose his defense, i.e. practices his "right to remain silent". In that way, the defence by remaining silent, is made nonsensical because the very thing used in procedure is defendant's personally written statement, produced without previous necessary warnings.

A particular problem is that disciplinary organs either completely neglect or easy pass over the statements of prisoners related to unlawful use of force by officials of the Penitentiary.This is for reason that such conduct, in addition to serious disciplinary offense, *over exceeding of authority in use of coercive measures* from Article 266, Paragraph 3, Point 10 of the Law on the Enforcement of Criminal Sanctions, simultaneous fulfill important elements of criminal act, *ill treatment and torture* from Article 137, Paragraph 3 in relation to Paragraph 1 of the Criminal Law.

Given criminal act belongs to a group of criminal acts treated ex-officio and where legal obligation of every citizen, especially state officer, is provided for, to inform the state prosecutor in charge about the suspicion that a criminal act was committed. It is not up to any state officer or other citizen, in this case members of disciplinary commissions, to evaluate the level of groundedness of suspicion, but their obligation is to inform the prosecutor in charge about that.

In all procedures conducted for disciplinary offenses from Article 145, Paragraph 1 point 10 of the Law on the Enforcement of Criminal Sanctions, it is not clearly defined which officer's order was not executed and in which cases exactly the prisoner did not execute or refused to execute the order, and it was not especially, at least, hinted, which severe consequences occurred or could have occurred.

All of the above remarks, according to current court practice, would be sufficient reason for the cancellation of judgments based on these violations of procedure in criminal proceedings in front of a court in charge.

In all the appeals to first-instance decisions of disciplinary commissions, Directorate for the Enforcement of Criminal Sanctions confirmed the decisions without any serious analysis of the pointed remarks.

In respect of the manner of work of disciplinary commission of Penitentiary Niš, it is necessary to say that this commission works in the environment in which there are several factors that act as a factor that limits the quality of acting. Above all, disciplinary commission does not have a room intended for or intended mostly for disciplinary commission sessions.

It leads to two situations: in first, when the defendant does not have attorney, session is held in some of the rooms in the closed part of the penitentiary; in second situation, disciplinary commission sessions are held in room out of the closed part of penitentiary used for receiving and distribution of parcels.

In first situation the procedure is going on very fast, which is probably to the damage of the quality, minutes are done in handwriting, they are very short and usually of incomplete contents. In second situation the minutes are done on the laptop, then the minutes are taken to the management building where there is only one, frequently out of work printer, which makes the procedure very slow. As well, it is a common situation that in the other part of the same room there is a group of staff or prisoners who do not have any relation to the procedure, and who, with their presence, loud discussions or in some other way make the conduction of the procedure difficult.

B3 – Sanctions in disciplinary proceedings

1. I.V.

Prisoner I.V. was pronounced guilty and sanctioned with disciplinary measure of solitary confinement in duration of 10 days during the whole day and night.

2. B.T.

Prisoner B.T. was pronounced guilty and sanctioned with disciplinary measure of solitary confinement in duration of 15 days during the whole day and night.

3. D.M.

Prisoner D.M. was pronounced guilty and sanctioned with disciplinary measure of solitary confinement in duration of 5 days during the whole day and night.

4. A.M.

Prisoner A.M. was pronounced guilty and sanctioned with disciplinary measure of solitary confinement in duration of 5 days during the whole day and night.-on probation two months

According to the provisions of the Law on the Enforcement of Criminal Sanctions, the disciplinary measure of solitary confinement is imposed only in exceptional cases, only for serious disciplinary offenses and may last no longer than 15 days. In the case of the confluence of disciplinary offenses, it is possible to impose a measure of solitary confinement for up to 30 days.

In three of the four disciplinary proceedings conducted in the reporting period, the disciplinary measures imposed were unconditionally isolation, and in one case, the imposed isolation was conditioned to two months. It may be concluded that the imposition of isolation measures is, in a way, a rule, very rarely conditioned, although Law on the Enforcement of Criminal Sanctions provides for the opposite.

In cases where the imposed measure of solitary confinement is for unconditional term, it can be concluded that in one case, solitary confinement was imposed for a disciplinary offense in duration of 10 days, while in the second case the measure of solitary confinement for a period of five days is imposed for a confluence of disciplinary offenses. It follows that either one measure is too lenient or other measure is too severe, or both. In any case, from the explanations themselves it can not be undoubtedly concluded what was the decisive factor when deciding about the length of a measure. In the case where the imposed measure of solitary confinement was 15 days, it is about a disciplinary procedure for two offenses in confluence, which means that the imposed measure could have been for 30 days, which can classify the imposed measure as moderately severe.

In respect of appeals against decisions imposing solitary confinement measures, it could be said that the effectiveness of this legal instrument in disputable. Namely, since the complaint does not delay the enforcement of the decision, isolation measures are done automatically, which leads to the fact that the appeal itself is pointless, since it can not correct the situation created by enforcement of solitary confinement before the validity of the decision (or bring him back in personal condition he was in before this severe measure).

B4 - Analysis of gathered information in relation to selected target group - potential victims of torture and ill- treatment

In disciplinary procedures in which the Lawyer of the Center participated, legal qualification of disciplinary offences that prisoners were charged with did not always match the factual description of the offense in disciplinary report. This is especially related to disciplinary offense *Refusing to execute lawful order issued by officer* because the factual description of the offense, itself, in separate cases was either given poorly or there is none.

In the disciplinary reports and proposals for the initiation of disciplinary procedure it is mostly very generally and superficially stated that nightstick and other coercive measures were used. Disciplinary report or the proposal for initiation of disciplinary procedure does not contain declared injuries that the prisoner gained in the incident, no matter he injured himself or the injuries are consequence of actions by official or third persons.

In some procedures the case file is paired with medical report on the medical examination of the prisoner after the use of force, but such manner, although correct, can not be considered a rule. Where there are reports on injuries the prisoner got, description of injuries generally does not match with the description of the incident from the official records and disciplinary report. At the same time, the description of events in which there has been use of coercive measures given by the prisoner does not match the report of the officer who used that force, nor with a medical report, when it exists.

That is why it may be concluded that official evidence on use of coercive measures, meaning report of the officer who used coercive measures and doctor who stated the injuries, are of very limited value and that they can hardly be accepted as valid sources of information.

All this should be observed in the light of already described disinterest of disciplinary commissions, in described cases, for registering prisoners' injuries in the Minutes on the course of disciplinary procedure.

In those cases when the use of coercive measures was justified, it was not proportionate to the severity of eventual offense and it can be estimated as exceeding allowed force.

C. Disciplinary reports against officers

During the project duration, Lawyer of the Center submitted, on behalf of two prisoners, proposals for initiation of disciplinary procedures against several members of Security Service in Penitentiary Niš. Proposal for initiation of disciplinary procedure against members of Security Service in Penitentiary Sremska Mitrovica was submitted by the prisoner B.T. himself. Reports are submitted for severe disciplinary offence - *Exceeding powers in use of coercive measures.* Article 266 Paragraph 3 Point 10 of the Law on the Enforcement of Criminal Sanctions.

As a limiting factor in first case (Prisoner M.P.) appears a fact that the prisoner addressed Center for Human Rights Niš, after almost six months after the incident. Thus, the disciplinary report is hardly provable since there were no neutral witnesses, injuries were not visible and medical file is not of any importance.

In second case (D.M.), prisoner phoned the lawyer of Center for Human Rights Niš and informed him that he was required to draw back his statement by Security service officers from Niš Penitentiary. As a possible incentive means for concluding in such agreement based on which the prisoner who has already served the punishment in disciplinary procedure should forget or forgive the abuse to which he was exposed, serves the fact that in the meantime he was transferred from the Department under special surveillance to A pavilion in which accommodation conditions are on much higher level.

D. APPENDIX: Individual cases, Legal analyses:

1. Defense in disciplinary procedure – prisoner I.V.
Date: 23.02.2011.godine
Place: Niš Penitentiary

Prisoner V.I. is charged with a serious disciplinary offence from the Article 145, Paragraph 1, point 10 of the Law on the Enforcement of Prison Sanctions. This offence is *committed by a prisoner who refuses to carry out the lawful orders of the authorized person for which reason occurred or may occur serious adverse consequences.*

As an act of a criminal offense it was stated that the convicted V.I., while being taken out for a walk, said to a senior commander, unchallenged "Mother fuck you Gendarme, what are you doing in isolation?"

However, neither in the disciplinary charges, nor in the defense of a convicted person, or in the testimony of witness – security service officer, it was not stated that any warrant or order was issued to the prisoner, and especially not the rightful order, so that is clear that the basic element of the offense for which the prisoner is charged is not fulfilled and that is the refusal of a lawful order given by an authorized person. Therefore, it is clear that the convicted person was found responsible for an offense he did not commit, for which he was reported superficially, with no analysis of violations and enforcement actions, which exceeded the charges to the damage of a prisoner.

Furthermore, according to the Article 158 of the Law on the Enforcement of Prison Sanctions "*Prisoner against whom the disciplinary procedure is conducted is obligatory hears and statements he gives are checked and other proofs are being carried out.".* In this disciplinary procedure only proofs proposed by the submitter of the charges were carried out, while none of the evidence proposed by prisoner and defender were carried out. This one-sidedness has led to the fact that factual condition was erroneously defined without respect of basic obligation of the organ in the procedure to pay the same attention to proofs carrying out- both those that are to the damage and to the benefit of the prisoner.

Therefore, the basic assessment that the disciplinary proceedings, at least in this case, is maximally shortened and unilaterally conducted, exclusively to the damage of the person who is reported as a offender, without going into the essence of things and without logical reasoning. The only important thing was to find the prisoner guilty, regardless of the facts or against them.

Besides that, Disciplinary Commission did not show, with a single word, that it was interested to initiate any process against the commander for eventual abuse and beating of the prisoner who spoke about that during the proceedings.

In the records of the disciplinary hearings it is stated that it is "public". However, the fact that only the authorized persons and defender could participate, while the presence of other persons in sense of publicity is completely excluded by the fact that no entrance in Penitentiary is allowed without a permit issued by a person that is conducting the procedure. This is related to lawyers as well- the defender was waiting in the waiting room for an hour at the entrance in Penitentiary, after what the president of the Commission invited him in. In relation to the length of the waiting the hearing was comically short (no longer than 15 minutes, including confidential talks between the prisoner and defender).

2. Defence in disciplinary procedure – prisoner T.B.
Date: 28.04.2011.
Place: KPZ Sremska Mitrovica

Prisoner T.B. is charged with serious disciplinary offence *violence towards another person* from Article 145, Paragraph 1, Point 5 of the Law on the Enforcement of Prison Sanctions.

According to the Article 158 of the Law on the Enforcement of Prison Sanctions *"Prisoner against whom disciplinary procedure is conducted is obligatory heard and statements he gives are checked and other evidence are presented"*. In this disciplinary procedure, only evidence proposed by the submitter of charge were presented while the evidence suggested by prisoner and defence were not presented at all. Such one-sidedness led to the fact that facts are wrongly determined and the prisoner was found guilty based on wrongly and incompletely determined facts and without respect of basic obligation of the organ in the procedure to present the evidence both to the damage and in favour of the prisoner. This is an obligation of each organ deciding in court and other procedures equalized to court ones and not only according to the valid legislation of the Republic of Serbia but, as well, according to the Article 6 of European Convention for the Protection of Human Rights and Basic Freedoms.

Thus, the basic evaluation is that disciplinary procedure against T.B. was one-sidedly carried out, exclusively to the damage of the person reported for committing the offence, without going into the core of the subject and without elementary check of the evidence proposed by the Defence. The only important thing was to find the prisoner guilty no matter facts or against them.

Besides that, the Commission did not show with a single word that it was interested for processing the commander for eventual abuse and beating of the prisoner who spoke about that in detail an persuasively during the hearing, although every citizen, especially state organ, is obliged to report an offence that is prosecuted ex officio.

3. Defense in disciplinary procedure- prisoner D.M.
Date: 31.10.2011.
Place: Penitentiary Niš

Prisoner M.D. was charged with the commitment of two serious disciplinary offences: *violence towards other person* from Article 145, Paragraph 1, Point 5 of the Law on the Enforcement of Criminal Sanctions and *refusal of officer's legal order* from Article 145, Paragraph 1, Point 10 of the Law on the Enforcement of Criminal Sanctions.

According to the Article 158 of the Law on the Enforcement of Criminal Sanctions, ``*A prisoner under disciplinary proceedings shall be obligatory questioned and his statements will be checked and other evidence presented"* In this disciplinary procedure evidence proposed by the submitter of the report were presented and only one evidence proposed by the prisoner and attorney- hearing of the witness - damaged A.G. Besides that, even the submitter of the report was not heared- supervisor Cvetović, although he was properly invited to hearing and he did not justify his absence. Such one-sidedness brought to the fact that factual condition was wrongly determined and the prisoner was announced guilty based on wrongly and incompletely determined factual condition and without respect of basic obligation of organ in the procedure to present with the same attention, both the evidence to damage and to favor of a prisoner. This is an obligation of each organ deciding in court and other procedures that are equalized with court ones, not only according to the acting laws of the Republic of Serbia, but also according to the Article 6 of the European Convention for the Protection of Human Rights and Basic Freedoms.

Thus, the basic evaluation is that disciplinary procedure towards M.D. was one-sidedly conducted, exclusively to the damage of a person that was reported to have committed an offence, without getting into the core of the matter and without elementary, more serious check of evidence proposed by the defense. The only important thing was to announce the prisoner guilty, no matter the facts or against them. The basic impression is that the Commission was simply in a hurry to finalize the matter and that the decision had been brought in advance.

This is even more clear when it is visible from the text of the minutes whose copy was delivered to the attorney, where one can see that the Commission announced M.D. guilty only for the offence from the Article 145 Paragraph 1 Point 5 of the Law on the Enforcement of Criminal Sanctions, while noting else in respect of other offence is mentioned in the minutes which represents a clear violation of the provisions of the procedure and would have to bring to abrogate the decision. Namely, it was necessary for the commission either to state that it freed M.D. from responsibility for other offence or to punish him with a unique sentence for both offences.

4. Defense in disciplinary procedure – prisoner A.M.
Date: 30.01.2012. and 06.03.2012.
Place: Penitentiary Niš

Prisoner M.A. was charged with one serious disciplinary offence- *refusal of officer's legal order* from Article 145 Paragraph 1 Point 10 of the Law on the Enforcement of Criminal Sanctions.

According to the Article 158 of the Law on the Enforcement of Criminal Sanctions, "*A prisoner under disciplinary proceedings shall be obligatory questioned and his statements will be checked and other evidence presented".* In this disciplinary procedure evidence proposed by the submitter of the report were presented and out of the evidence proposed by prisoner's defence the only that was done was hearing of a witness and medical report was provided.

This is surely advancement in comparison to previous disciplinary procedures, but, only that is not enough. Namely, neither submitter of the report nor senior commander who directly participated in the incident were heard directly by the Commission in the presence of the prisoner and attorney. On the other hand it is impossible to understand as accidental the amnesia that stroke all three witnesses proposed by prisoner A.M. It was obvious that they did not want to testify in front of officials and that they find the excuse for that in medical condition. The fact that this impression is true is supported by another fact that these three prisoners were pretty joyfully and without any psychical disturbance talking to each other and to commanders who brought them, which was seen by the defense because these persons were held in the same room for around 45 minutes and the attorney was in the same room waiting for the minutes to be signed because the electricity went out.

That is why I think that factual condition was wrongly and incompletely determined and prisoner was announced guilty based on factual condition determined in that way, and essentially without consistent respect of a basic obligation of the organ in the procedure to present with the same attention, both the evidence to damage and to favor of a prisoner. This is an obligation of each organ deciding in court and other procedures that are equalized with court ones, not only according to the acting laws of the Republic of Serbia, but also according to the Article 6 of the European Convention for the Protection of Human Rights and Basic Freedoms.

It is basic evaluation that the disciplinary procedure against M.A. was conducted formally and ostensibly in line with the law, but factually without getting into the core of the matter and elementary serious check of evidence proposed by the defense.

E. APPENDIX: Disciplinary Commissions` decisions

Republic of Serbia
Ministry of Justice
Directorate for the Enforcement of Criminal Sanctions
Penitentiary Niš
No: 24-156/2011-01/3
Date: 23.02.2011.
Niš

Pursuant to the Article 158 of the Law on the Enforcement of Criminal Sanctions /Official Gazette of the Republic of Serbia No 85/05 and 72/09) and Article 61 of the Rulebook on disciplinary offences, measures and treatment towards prisoners (Official Gazette of the Republic of Serbia No 59/06) the following is produced:

MINUTES
ON THE COURSE OF DISCIPLINARY PROCEDURE

Held on 23.02., in front of Disciplinary Commission of Penitentiary in Niš, in the subject of disciplinary responsibility of prisoner V.I, at the proposal for initiation of disciplinary procedure by senior Supervisor C.S. from 26.01.2011 for grounded suspicion that he committed serious disciplinary offence from Article 145, Paragraph 1, Point 10 of the Law on the Enforcement of Criminal Sanctions.

Hearings are public
Hearings start at **10.00.**

Present:

Prisoner against whom the procedure is conducted: **V.I.**
Submitter of the proposal **C.S.** was properly invited

Disciplinary Commission

President of Disciplinary Commission: Mladenović Vesna
Member: Radojković Nebojša
Member: Vujović Žarko
Minutes recorded by: Blagojević Zdenka.

In line with Article 161 of the Law on the Enforcement of Criminal Sanctions and Article 53 of the Rulebook on disciplinary offences, measures and treatment towards prisoners, the prisoners are informed that they are entitled to expert legal aid, and prisoner in the procedure says that he wants expert legal aid - Lawyer Cvejić Aleksandar.

Prisoners are taught about the right of use language and script.
Proposal for initiation of the procedure is read out and prisoner, after declaring whether he understands for what he is charged, gives the following statement about the statements from the proposal:

Statements from the proposal for initiation of the procedure are not true. On the given day it was icy and due to inattention I slipped and fell. I swore, more for the fact that I fell, that curse was not addressed to the commander. Besides me there were three more prisoners who saw that I fell and heard that I cursed the ice, and the commander thought that I cursed him. I was separated from the walk line by the commander, slapped, night stick was used on me, which I couldn't say in my statement. I did not give resistance to the commander, all the time my hands were by my body. Prisoners who were present are R.D., N.N. and Đ.D.

Statement given by the prisoner

_____

Senior commander Đ.I., as a witness:
I was present at the time of the incident. Statements from the proposal for initiation of disciplinary procedure are true. I was present when prisoner I.V. insulted the commander after which he was taken out from the walk line by the senior commander Đ.
During the walk I was in the guard house while Đ. let them in the walk line. Besides prisoner I.V. there were also prisoner R.D., a prisoner whose name I do not know but who is called "Bliski" and one more prisoner whose identity I cannot remember.

Attorney of the prisoner requires hearing of prisoners R.D. and N.N.

In the final word Attorney Cvejić Aleksandar

I consider that by none of the presented evidence it was determined that the reported prisoner committed the offence he is charged with. Neither from the report nor from the statement of the heard witness, officer, does it come that the submitter of the report issued any kind of order or a report and for that reason I consider that here are no grounded elements of the offence he is charged with. I consider that disciplinary commission was obliged, in order to determine the complete factual condition, to hear as well two proposed witnesses and also for the fact that it is about the persons who did not participate in any manner in the incident, except as witnesses who are not interested for the final outcome. I consider that all the conditions are fulfilled to free the prisoner from the report.

Attorney Cvejić Aleksandar

_____

Disciplinary Commission brings a:

DECISION

Proposal by Attorney Cvejić Aleksandar for hearing of prisoners R.D. and N.N. is rejected and it decided about the punishment.

Evidence procedure:
Read out:
Proposal for initiation of Disciplinary Procedure from 26.01.2011.
Report for serious disciplinary offence from 25.01.2011.
Official note of senior commander Đ.M. from 25.01.2011.
Prisoner I.V.'s statement from 25.01.2011
Opinion of Treatment Officer from 22.02.2011
Conclusion from 16.12.2011

There are no proposals for presentation of new evidence

After the conducted evidence procedure, the prisoner is give final word and he says:

Disciplinary Commission brings the:

DECISION

Hearing is concluded

Prisoner V.I., Personal Identification Number 8258 , for the committed severe offence from Article 145, Paragraph 1, Point 10 of the Law on the Enforcement of Criminal Sanctions, is imposed a disciplinary measure:

OF SOLITARY CONFINEMENT DURING WHOLE NIGHT AND DAY, IN DURATION OF 10 DAYS

The minutes are read and signed without any remarks
Remarks of the prisoner to the contents of the minutes: no remarks

Minutes taken by:	Prisoner:	Disciplinary Commission:
_____	_____	_____

x x x x x

Republic of Serbia
Ministry of Justice
Directorate for the Enforcement of Criminal Sanctions
Penitentiary Niš
No: 24-599/2011-01/3
Date: 31.10.2011.
Niš

Pursuant to the Article 158 of the Law on the Enforcement of Criminal Sanctions /Official Gazette of the Republic of Serbia No 85/05 and 72/09) and Article 61 of the Rulebook on disciplinary offences, measures and treatment towards prisoners (Official Gazette of the Republic of Serbia No 59/06) the following is produced:

MINUTES
ON THE COURSE OF DISCIPLINARY PROCEDURE

Held on 23.02., in front of Disciplinary Commission of Penitentiary in Niš, in the subject of disciplinary responsibility of prisoner M.D. 7425, at the proposal of supervisor S.C. from 22.08.2011 for grounded suspicion that he committed serious disciplinary offence from Article 145, Paragraph 1, Points 5 and 10 of the Law on the Enforcement of Criminal Sanctions

Hearings start at **11.00.**
Hearings are public

Present:

Prisoner against whom the procedure is conducted: **M.D. and his attorney based on authorization, Cvejić Aleksandar**

Submitter of the proposal **C.S.** was properly invited

Disciplinary Commission

President of Disciplinary Commission: Suzana Tomić
Member: Nebojša Radojković
Member: Nikolić Goran

Minutes recorded by: Blagojević Zdenka.

In line with Article 161 of the Law on the Enforcement of Criminal Sanctions and Article 53 of the Rulebook on disciplinary offences, measures and treatment towards prisoners, the prisoners are informed that they are entitled to expert legal aid, and prisoner in the procedure says that he wants expert legal aid- Lawyer Cvejić Aleksandar from Belgrade.

Prisoners are taught about the right of use language and script.
Proposal for initiation of the procedure is read out and prisoner, after declaring whether he understands for what he is charged, gives the following statement about the statements from the proposal:

Prisoner M.D. said: Everything given in the proposal is not true, and I was forced to sign the statement by the commander M.Đ. I was fasting Ramasan Fast and after that I went to bed for a sleep. Statements in the proposal that I pulled A.G. to my bed and threatened him that I would beat him and rape him are not true. 14-15 days before this procedure I asked A.G. if I really ill-treated him and he said that the commanders made him write such statement. I ask from the Commission to free me.

Statement given by the prisoner

_____

Evidence procedure:
Read out:
Proposal for initiation of Disciplinary Procedure from 22.08.2011.
Report from 21.08..2011.
Official note of senior commander from 05.2011.
Statement of prisoner M.D. from 22.08.2011.
Conclusion from 23.09.2011.
Opinion of Treatment Service from 28.09.2011

The prisoner proposes to hear G.A., supervisor C.S. and commander Đ.M.

Disciplinary Commission brings a:

DECISION

To hear prisoner G.A. related to the circumstances –whether that night prisoner M.D. threatened that he would rape him and beat him.

Prisoner A.G. is introduced with the fact that he had to give true statement.

Prisoner A.G. declares: That night prisoner M.D. tried to rape me and "old man" N.Ž. I started to climb up the bed and M.D. pulled me and told me "I will rape you now!" "Old man" got up and we started to fight. Old man was banging on the door and commanders bumped in and said "Get out", "Old man" and I went out and D.M. did not want to get out. I wrote the statement willingly, there was no coercion. We went to room No 6 and I am not familiar with what was going on in room No 14.
When asked by the member of the Commission if he had some injury, the witness replied that he had a scratch on his nose which was caused by his fell from the bed, when D.M. told him that he would rape him, and D.M. pushed him from the bed.
When asked by the member of the Commission if he was taken to the doctor's he says that N.Ž. and him were taken to the doctor's.
When asked by the member of the Commission in what relations he was with N.Ž. he said: we don't communicate and before that we were in good relations.
When asked by the attorney why he wrote in the statement that D.M. tried to rape only him, and not the old man he said- I did not write that prisoner D.M. tried to rape the "old man" because he only ill treated him.
When asked by the attorney how many commanders entered the room and who of the commanders was there, prisoner A.G. replies: 3 commanders, I don't know who they are.
When asked by the prisoner D.M. if he remembered that 14 or 15 days before this proceedings he asked him during the walk if he remembered what had happened that night and if he had raped him or ill treated him, prisoner A.G. replies: I don't remember.

Statement given by prisoner G.A.

_____

Disciplinary Commission brings a:

DECISION

Proposal for the hearing of Commander M.Đ. and Supervisor C. is rejected

---

In the final word, the attorney of prisoner Cvejić Aleksandar:

There is no evidence that he committed any of the offences he is charged with, especially for the fact that written evidence and statement of heard witness are not in accordance. At the same time, the damaged gave two versions of the same incident from which it could be seen that the whole case was fabricated.
For that reason I propose that the Commission frees prisoner D.M. from disciplinary responsibility.

Attorney Cvejić Aleksandar

_____

In the final word prisoner D.M. said;

Nothing is true and I wrote the statement that I wrote threatened by Commander Đ., S.M. and third Commander who worked with them in the shift. I was beaten and I did not give active resistance,

Prisoner M.D.

_____

DECISION

Hearing is concluded

Prisoner M.D. 5980 , for the committed severe offence from Article 145, Paragraph 1, Point 5 of the Law on the Enforcement of Criminal Sanctions, is imposed a disciplinary measure:

OF SOLITARY CONFINEMENT DURING WHOLE NIGHT AND DAY, IN DURATION OF 5 DAYS

Minutes taken by: _____ Prisoner: _____ Disciplinary Commission: _____

x x x x x x x x

Republic of Serbia
Ministry of Justice
Directorate for the Enforcement of Criminal Sanctions
Penitentiary Niš
No: 24-759/2011-01/3
Date: 30.01.2012
Niš

Pursuant to the Article 158 of the Law on the Enforcement of Criminal Sanctions /Official Gazette of the Republic of Serbia No 85/05 and 72/09) and Article 61 of the Rulebook on disciplinary offences, measures and treatment towards prisoners (Official Gazette of the Republic of Serbia No 59/06) the following is produced:

MINUTES
ON THE COURSE OF DISCIPLINARY PROCEDURE

Held on 30.01.2012 in front of Disciplinary Commission of Penitentiary in Niš, in the subject of disciplinary responsibility of prisoner M.A., at the proposal of Supervisor Z.N. from 11.11.2011 for grounded suspicion that he committed serious disciplinary offence from Article 145, Paragraph 1, Point 10 of the Law on the Enforcement of Criminal Sanctions

Hearings start at **10.00.**
Hearings are public
Present:

Prisoner against whom the procedure is conducted: **M.A.**
Submitter of the report Z.N. was properly invited

Disciplinary Commission

Deputy President of Disciplinary Commission: Mladenović Mirjana
Member: Vujović Žarko
Member: Radojković Nebojša
Minutes recorded by: Blagojević Zdenka.

In line with Article 161 of the Law on the Enforcement of Criminal Sanctions and Article 53 of the Rulebook on disciplinary offences, measures and treatment towards prisoners, the prisoners are informed that they are entitled to expert legal aid, and prisoner in the procedure says that he wants expert legal aid - Lawyer Cvejić Aleksandar.

Prisoners are taught about the right of use language and script.
Proposal for initiation of the procedure is read out and prisoner, after declaring whether he understands for what he is charged, gives the following statement about the statements from the proposal:

Prisoner M.A. said: it is true that I had mental problems and that I was under supervision of psychiatrist. It is true that I hit my head in the bar of the prison hospital and that I had psychical problems. It is not true that I gave any active resistance and I did not push away apprentice D., as it is given in the proposal. It is not true that when the commander took me to the doctor's I used the moment, snatched and hit my head in the wall for two times. Regarding the statement from 10.11.2011. I emphasize that the supervisor came to me for several times, with an aim to make me write such a statement. I declare that in the given incident, M.M., M.A. and M.V. were present, in the prison hospital.
I say that the basic reason of the incident was commander's nervousness for unfavorable result of the match, for which reason he applied illegal force-coercive measure, and when I was tied, he invited other commanders with explanation that I made problems and that is how I suffered innocent.

Statement given by the prisoner

_____

Evidence procedure:
Read out:
Proposal for initiation of Disciplinary Procedure from 11.11.2011.
Report from: 10.11.2011.
Official note of senior commander J.D. from 10.11.2011.
Prisoner's statement from 10.11.2011.
Opinion of the Treatment Service from 20.12.2011
Conclusion from 16.12.2011

There are no proposals for presentation of new evidence
In the final word, the defender of the accused, Aleksandar Cvejić said:
In the final word the prisoner said

DECISION

Hearing is postponed for 24.02.2012 at 09.00. for the hearing of the witnesses.

Minutes taken by:	Prisoner:	Disciplinary Commission:
_____	_____	_____

x x x x x x x x x

Republic of Serbia
Ministry of Justice
Directorate for the Enforcement of Criminal Sanctions
Penitentiary Niš
No: 24-759/2011-01/3
Date: 06.03.2012
Niš

Pursuant to the Article 158 of the Law on the Enforcement of Criminal Sanctions /Official Gazette of the Republic of Serbia No 85/05 and 72/09) and Article 61 of the Rulebook on disciplinary offences, measures and treatment towards prisoners (Official Gazette of the Republic of Serbia No 59/06) the following is produced:

MINUTES
ON THE COURSE OF DISCIPLINARY PROCEDURE

Held on 06.03.2012, in front of Disciplinary Commission of Penitentiary in Niš, in the subject of disciplinary responsibility of prisoner M.A., at the proposal of Supervisor Z.N. from 11.11.2011. for grounded suspicion that he committed serious disciplinary offence from Article 145, Paragraph 1, Point 10 of the Law on the Enforcement of Criminal Sanctions

Hearings start at **10.00.**
Hearings are public
Present:

Prisoner against whom the procedure is conducted: **M.A.**
Submitter of the report Z.N. was properly invited

Disciplinary Commission

Deputy President of Disciplinary Commission: Mladenović Mirjana
Member: Krstić Miljan
Member: Radojković Nebojša
Minutes recorded by: Blagojević Zdenka.

In line with Article 161 of the Law on the Enforcement of Criminal Sanctions and Article 53 of the Rulebook on disciplinary offences, measures and treatment towards prisoners, the prisoners are informed that they are entitled to expert legal aid, and prisoner in the procedure says that he wants expert legal aid- Lawyer Cvejić Aleksandar.

Prisoners are taught about the right of use language and script.
Proposal for initiation of the procedure is read out and prisoner, after declaring whether he understands for what he is charged, gives the following statement about the statements from the proposal:

Prisoner M.A. said:

To the question of the president of the Commission, whether he was taken to doctor's, prisoner M.A. said that at 9.00 he was at doctor's Anita, for mental condition and that later, the same day, he went to the doctor's again around 23.30.

Statement given by the prisoner

_____

Evidence procedure:
Read out:
Proposal for initiation of Disciplinary Procedure from 11.11.2011.

Report from: 10.11.2011.
Official note of senior commander J.D. from 10.11.2011.
Prisoner's statement from 10.11.2011.
Medical report from 02.03.2012
Opinion of the Treatment Service from 20.12.2011
Conclusion from 16.12.2011

Disciplinary Commission brings a:

DECISION

To hear as witnesses the prisoners: M.M., M.A. and M.V.

Prisoner M.M. is not in state to testify, due to bad mental condition

Prisoner M.V. said: Bearing in mind that I had stroke I don't remember the given incident and I can not make a statement.

Statement given by prisoner M.V.
_____

Prisoner M.A. said: I did not attend the given incident and in that sense I can not make statement about that. I was in the prison hospital but I did not attend any incident and I did not hear any noise. To the question of A.M.'s attorney „Did he hear any noise? "Witness M.A. replies that he did not hear anything.

Statement Given by prisoner M.A.
_____

Proposal of attorney Cvejić Aleksandar to hear the senior commander J.D. **is rejected**.

There are no proposals for presentation of new evidence
In the final word, the defender of the accused, Aleksandar Cvejić said:
I think that there is no evidence that the prisoner committed the offence he is charged with and emphasizes that medical report was in line with the statement of the prisoner and that official note was not in line with medical report from 02.03.2011. bearing in mind that the prisoner has two bruises on the back part of the beck, which is illogical, bearing in mind the fell, as well as other injuries which were declared by senior commander J.D., were not in accordance with the injuries given in the medical report.

Attorney Cvejić Aleksandar
_____

In the final word the prisoner said

DECISION

Hearing is concluded.

Prisoner M.A., Personal Identification Number 8937 , for the committed severe offence from Article 145, Paragraph 1, Point 10 of the Law on the Enforcement of Criminal Sanctions, is imposed a disciplinary measure:

OF SOLITARY CONFINEMENT DURING WHOLE NIGHT AND DAY, IN DURATION OF 5 DAYS, WHOSE ENFORCEMENT IS CONDITIONALLY DELAYED FOR TWO MONTHS.

Minutes taken by:	Prisoner:	Disciplinary Commission:
_____	_____	_____

F. APPENDIX: Solitary confinement of prisoners (translated parts of the report)

21st General Report of the CPT/ Solitary confinement of prisoners/ disciplinary sanction (www.cpt.coe.int/en/docsannual.htm)

Solitary confinement of prisoners

Introduction

53. Solitary confinement of prisoners is found, in some shape or form, in every prison system. The CPT has always paid particular attention to prisoners undergoing solitary confinement, because it can have an extremely damaging effect on the mental, somatic and social health of those concerned[1].
This damaging effect can be immediate and increases the longer the measure lasts and the more indeterminate it is. The most significant indicator of the damage which solitary confinement can inflict is the considerably higher rate of suicide among prisoners subjected to it than that among the general prison population. Clearly, therefore, solitary confinement on its own potentially raises issues in relatio nto the prohibition of torture and in human or degrading treatment or punishment. In addition, it can create an opportunity for deliberate ill-treatment of prisoners, away from the attention of other prisoners and staff. Accordingly, it is central to the concerns of the CPT and, on each visit, delegations make a point of interviewing prisoners in solitary confinement in order to examine their conditions of detention and treatment and to check the procedures for deciding on such placements and reviewing them. In this section of its General Report, the CPT sets out the criteria it uses when assessing solitary confinement. The Committee believes that if these criteria are followed, it should be possible to reduce resort to solitary confinement to an absolute minimum, to ensure that when it is used it is for the

[1] The research evidence for this is well summarised in Sharon Shalev's "A Sourcebook on Solitary Confinement" (Mannheim Centre for Criminology, London, 2008), available electronically at www.solitaryconfinement.org

shortest necessary period of time, to make each of the solitary confinement regimes as positive aspossible, and to guarantee that procedures are in place to render the use of this measure fully accountable.

54. The CPT understands the term "solitary confinement" as meaning whenever a prisoner is ordered to be held separately from other prisoners, for example, as a result of a court decision, as a disciplinary sanction imposed within the prison system, as a preventative administrative measure or for the protection of the prisoner concerned. A prisoner subject to such a measure will usually be held on his/her own; however, in some State she/she may be accommodated together with one or two other prisoners, and this section applies equally to such situations.
As regards more specifically the solitary confinement of juveniles, a practice concerning which the CPT has particularly strong reservations, reference should also be made to the comments made by the Committee in its 18th General Report[2].
This section does not apply to the isolation of prisoners for medical reasons, as the grounds for such a measure are of a fundamentally different nature.

The principles involved

55. Solitary confinement further restricts the already highly limited rights of people deprived of their liberty. The extra restrictions involved are not inherent in the fact of imprisonment and thus have to be separately justified. In order to test whether any particular imposition of the measure is justified, it is appropriate to apply the traditional tests enshrined in the provisions of the European Convention on Human Rights and developed by the case-law of the European Court of Human Rights. The simple mnemonic PLANN summarises these tests.

(a) Proportionate: any further restriction of a prisoner's rights must be linked to the actual or potential harm the prisoner has caused or will cause by his or her actions (or the potential harm to which he/she is exposed) in the prison setting. Given that solitary confinement is a serious restriction of a prisoner's rights which involves inherent risks to the prisoner, the level of actual or potential harm must beat least equally serious and uniquely capable of being addressed by this means. This is reflected, for example, in most countries having solitary confinement as a sanction only for the most serious disciplinary offences, but the principle must be respected in all uses of the measure. The longer the measure is continued, the stronger must be the reason for it and the more must be done to ensure that it achieves its purpose.

(b) Lawful: provision must be made in domestic law for each kind of solitary confinement which is permitted in a country, and this provision must be reasonable. It must be communicated in a comprehensible form to everyone who may be subject to it. The law should specify the precise circumstances in which each form of solitary confinement can be imposed, the persons who may impose it, the procedures to be followed by those persons, the right of the prisoner affected to make representations as part of the procedure, the requirement to give the prisoner the fullest possible reasons for the decision (it being understood that there might in certain cases bereasonable justification for withholding specific details onsecurity-related grounds or in order to protect the interests of third parties), the frequency and procedure of reviews of the decision and the procedures for appealing against the decision. The regime for each type of solitary confinement should be established by law, with each of the regimes clearly differentiated from each other.

(c) Accountable: full records should be maintained of all decisions to impose solitary confinement and of all reviews of the decisions. These records should evidence all the factors which have been taken into account and the information on which they were based. There should also be a record of the prisoner's input or refusal to contribute to the decision-making process. Further, full records should be

[2] 10. See CPT/Inf (2008) 25, paragraph 26.

kept of all interactions with staff while the prisoner is in solitary confinement, including attempts by staff to engage with the prisoner and the prisoner's response.

(d) Necessary: the rule that only restrictions necessary for the safe and orderly confinement of the prisoner and the requirements of justice are permitted applies equally to prisoners undergoing solitary confinement. Accordingly, during solitary confinement there should, for example, be no automatic withdrawal of rights to visits, telephone calls and correspondence or of access to resources normally available to prisoners (such as reading materials). Equally, the regime should be flexible enough to permit relaxation of any restriction which is not necessary in individual cases.

(e) Non-discriminatory: not only must all relevant matters be taken into account in deciding to impose solitary confinement, but care must also be taken to ensure that irrelevant matters are not taken into account. Authorities should monitor the use of all forms of solitary confinement to ensure that they are not used disproportionately, without an objective and reasonable justification, against a particular prisoner or particular groups of prisoners.

Types of solitary confiment and their legitimacy

56. There are four main situationsin which solitary confinement is used. Each hasits own rationale andeach should be viewed differently:

.....

(b) Solitary confinement as a disciplinary sanction

Withdrawal of a prisoner from contact with other prisoners may be imposed under the normal disciplinary procedures specified by the law, as the most severe disciplinary punishment. Recognising the inherent dangers of this sanction, countries specify a maximum period for which it may be imposed. This can vary from as little as a few days to as much as a month or more. Some countries allow prison directors to impose a given maximum period, with the possibility for a judicial body to impose a longer period. Most countries – but not all – prohibit sequential sentences of solitary confinement.
Given the potentially very damaging effects of solitary confinement, the CPT considers that the principle of proportionality requires thatit be used as a disciplinary punishment only in exceptional cases and as a last resort, and for the shortest possible period of time. The trend in many member States of the Council of Europe is towards lowering the maximum possible period of solitary confinement as a punishment. The CPT considers that the maximum period should be no higher than14 days for a given offence, and preferably lower[3]. Further, there should be a prohibition of sequential disciplinary sentences resulting in an uninterrupted period of solitary confinement in excess of the maximum period. Any offences committed by a prisoner which it is felt call for more severe sanctions should be dealt with through the criminal justice system.

.....

The decision of placement in solitary confinement: procedures and safeguards

57. In order to ensure that solitary confinement is only imposed in exceptional circumstances and for the shortest time necessary, each type of solitary confinement should have its own distinct process for applying and reviewing it. The CPT outlines here what it considers to be the appropriate processes:

.....

[3] The maximum period should certainly be lower in respect of juveniles

(b) Solitary confinement as a disciplinary sanction

The reason for the imposition of solitary confinement as a punishment, and the length of time for which it is imposed, should be fully documented in the record of the disciplinary hearing. Such records should be available to senior managers and oversight bodies. There should also be an effective appeal process which can re-examine the finding of guilt and/or the sentence in time to make a difference to them in practice. A necessary concomitant of this is the ready availability of legal advice for prisoners in this situation.

Prisoners undergoing this punishment should be visited on a daily basis by the prison director or another member of senior management, and the order given to terminate solitary confinement when this step is called for on account of the prisoner's condition or behaviour. Records should be kept of such visits and of related decisions.

.....

Conclusion

64. The aim of the CPT in setting out these standards is to minimise the use of solitary confinement in prisons, not only because of the mental, somatic and social damage it can do to prisoners but also given the opportunity it can provide for the deliberate infliction of ill-treatment. The CPT considers that solitary confinement should only be imposed in exceptional circumstances, as a last resort and for the shortest possible time.

Prisoners undergoing solitary confinement should be accommodated in decent conditions. Further, the measure should involve the minimum restrictions on prisoners consistent with its objective and the prisoner's behaviour, and should always be accompanied by strenuous efforts on the part of staff to resolve the underlying issues. More specifically, regimes in solitary confinement should be as positive as possible and directed at addressing the factors which have made the measure necessary. In addition, legal and practical safeguards need to be built into decision-making processes in relation to the imposition and review of solitary confinement.

Ensuring that solitary confinement is always a proportionate response to difficult situations in prisons will promote positive staff-prisoner interaction and limit the damage done to the very persons who are often already among the most disturbed members of the inmate population.

……. G. Recapitulation…….

During representation in disciplinary procedures and in all the contacts with prisoners on that occasion, the following was observed:

- Existence of violation of prisoners' rights (violation of right to defense –Article 158 Of the Law on the Enforcement of Criminal Sanctions and Article 10 of the Rulebook on disciplinary offences…; violation of right to instructions on the right to legal defender and possibility of later use of personally written statement written right after the incident, violation of right to effective legal means);

- In all the procedures except for one, the most severe measure was imposed - solitary confinement. This is contrary to both national legislation and European Prison Rules which recommend that the solitary confinement may be imposed only in exceptional cases and for a certain period of time which must be as short as possible;

- Appeal to the decision of disciplinary commission does not delay the enforcement which makes the submission of appeal on decision on solitary confinement measure senseless, because once enforced, this measure cannot be brought back in previous condition;

- Evidence on use of coercive measures and medical reports on examination of the person after use of coercive measures are not in compliance neither with the factual description of the incident nor with the statement of the defendant. Injuries caused by use of coercive measures are not completely registered and do not match the severity of eventual disciplinary offence;

- Experience from the practice showed that in cases when the attorney (lawyer) appears at the session of disciplinary commission, the session is delayed, which causes unneeded expenses to a prisoner, which ultimatively leads to de-stimulation of prisoners to engage attorneys for disciplinary procedures.

Conclusion:

1. All previously exposed points to existence of certain lacks in the system of initiating and conducting disciplinary procedures, which as a consequence, besides decrease of some of the existing rights of prisoners anticipated by law, may influence that sanctioning and prevention of torture and other humiliating actions are less successful. This is realized in a way that, due to numerous omissions and non-efficiency of the system of disciplinary procedures, prisoners unwillingly report cases of ill-treatment because they don't believe the possibility of positive outcome.

2. Use of force, contrary to the Law on the Enforcement of Criminal Sanctions and European Prison Rules, was not applied as ultimate measure and in the shortest duration, but in most cases as a first measure and in completely undefined duration, which depends of the fact who applies the force, not from the circumstances of the incident.

Zoran Gavrilović

RESEARCH ON PRISONERS' ATTITUDES ON CORRUPTION AND FIGHT AGAINST CORRUPTION WITHIN THE SYSTEM FOR THE ENFORCEMENT OF CRIMINAL SANCTIONS IN SERBIA

1. Introduction

After the analysis of a relevant legal and sub-legal framework[4] (further in the text Analysis), it is now turn to determine how is all this seen from the aspect of those mostly concerned with this topic- persons who serve sentences- prisoners. Before we start to present the findings of the research in detail, we will briefly present a reference framework in which the data will be analyzed. In this way we want to achieve several things.

First, to define analytical framework of the analysis. On one hand, these are definition of corruption and anti-corruption presented in the Analysis, and on the other hand are the findings of the same Analysis related to the state of corruption and anti-corruption. Of course, it does not mean that by presenting of this framework we wish to narrow the space of our conclusion making or that our intention is to mould the gathered data in a previously set framework. On the contrary, this is a way to, in search of findings and conclusions, have a compass that will help us not to stray away in the sea of information gathered during the poll conducted among the prisoners. (Assumed) set framework gives us wideness and preciseness, while the anti-corruption analysis leads to being concrete and directs us in the process of research and analysis. And what is the most important for epistemological aspect of research, by observing the gathered data on these two levels we have opportunity to (self)control at conclusion making, and that means that we can observe the gathered data in comparison to actual but also to previous condition.

We gave definitions of corruption and anti-corruption in the Analysis. In order to better understand the analyses of the research themselves and recommendations that will derive from them, we consider as a precious to present, in few sentences, what we, as authors consider to be corruption and anti-corruption, because, exactly that perception was the basis for the creation of research instrument we used to gather data.

In the process of researching corruption in prisons, as a corruption we will consider the "state of unsustainability of an institution due to which alternative structures emerge- deviations and (pre) domination of latent functionality over the manifest one".

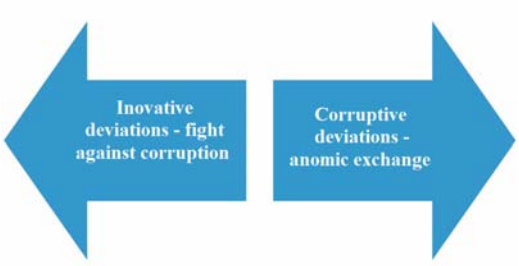
In concrete, it means that if one prison or prison system in general is not able to:

- Realize its social function (re-socialization of prisoners) and/or
- Enable realization of rights to the members of prison institution management, prison services and prisoners as clients, and/or
- Enable performance of obligations and duties, including sanctioning of rights and duties violation,

Then, the system for the enforcement of criminal sanctions is partially or completely unsustainable, which has, as a consequence, creation of two kinds of deviations: innovative and corruptive.

FIGURE No 1. Innovative and corruptive deviation

[4] http://www.chr-nis.org.rs/anti-corruption-analysis-of-the-law-on-the-enforcement-of-criminal-sanctions



Innovative deviations are aimed at increasing the sustainability of an institution, i.e. reform. Innovative deviation is any activity that is aimed at combating corruption i.e. building integrity, increase of knowledge on anti- corruption, increase of punishability for acts of corruption and the building of power and interests to fight the corruption.

Opposite to innovative deviations are corruptive deviations that spoil the institution. Corruptive deviation is anomic exchange of material goods, rights and interests between two or more parties in which the ethical, professional and legal standards are violated.

Anomic exchange is done on three levels.

First level is the latent corruption - corruption of reputation and customs. The motivation of both actors is of non-instrumental nature, i.e. corruption backed by the traditional or emotional behavior. In essence of this form of corruption is an anthropological model of giving, because the corruptive media is perceived as present or a gift. The giving of is a function of observing customs. The initiator of the latent corruption is a corruptor. It is notable that there is not always the consent / will of both actors, both the corruptor and corrupted to engage in corruption.

The second level is the manifest corruption - corruption of interest and power. In this case the motivation of both sides is a targeted rational , with the clearly expressed consent of participants to in the anomic way exchange material assets, rights and interests. Corruptive media are seen as a benefit/cost for the work done. Phenomenal forms of manifest corruption are: one on one and clique (more players).

Between the two above mentioned levels is extortion. Extortion is a form of corruption initiated by one who has the monopoly or the possibility of blackmail, and in a position to ask for the money or counter favor for providing the service. This form of corruption is different from the other ones for inequality of the position of corrupted and a citizen who becomes a corruptor, not at his own will.

Third level is a corruption of institution characterized by: the dominance of informal system of regulation of rights and obligations of institutions members over the formal; domination of the principle of power, status and reputation over the expertise, procedure, professionalism; lack of performance evaluation criteria; personalization of the relationship - position in corruptive institution depends on the will of a superior and subordinate's relationship to him; oligarchic distribution of management reflected in napoleonism, which is "power from above, the subordination from the bottom"; formation of chain cliques and clans.

Based on the presence of emergent forms of corruption on the level of prison, we can speak about whether corruption is an incident that is quickly detected and sanctioned, or it is about a systemic corruption that has functional importance for the formal survival of the prison as an institution. Namely, corruptive organizing is a way for a prison to survive as an institution. However, being such as an "hand-cuffed institution", prison does no longer perform a social function - the re-socialization of prisoners.

It is important to bear in mind that sustainability of the prison system is a guarantee of its institutional integrity, and that primarily means: respect of legal and sub-legal framework, the regulation of

discretion powers, transparency of decision making, rewards and sanctions. We note this because it is stated in the Analysis that in the actual normative framework, which regulates the system of criminal sanctions, there is a significant volume of unregulated discretion powers that directly influence the lack of transparency, which prevents the prison system to perform the function entrusted by society - re-socialization of prisoners.

2. METHODOLOGICAL FRAMEWORK OF RESEARCH

2.1. Concept

After the introductory part, in the next few sentences we will present the methodology that we used when investigating the condition and prospects of corruption and the fight against corruption in prisons in Serbia As the researchers, we faced the special challenge for two reasons.

First, the very issue of corruption is yet difficult phenomenon to be caught by the researhers out of the statistics on the number of complaints filed and imposed final verdicts, i.e. measuring attitudes about its prevalence, actors, causes, effects and tolerance. Irrespective of which segment of society it is about, every researcher is faced with this problem.

Second, the area of the enforcement of criminal sanctions, the position of interviewees and the position of the organizers of the research (CSO) open many epistemological questions Aware of this, we created a methodological framework which was supposed to give us an initial picture of corruption and the fight against corruption from the perspective of prisoners. For this reason we tried to combine "qualitative" and "quantitative" and all this in order to enable the interviewee to by filling out a written questionnaire-interview, more adequately disclose the information to be relevant for our research

Mitigating factor in this endeavor is that Centre for Human Rights Nis has extensive experience in monitoring prisons in Serbia, which means adequate associates, knowledge of processes and procedures within the system for the enforcement of criminal sanctions in Serbia, a certain fund of knowledge experience, and a network of trust made of prisoners.

In accordance with the previously given analytical framework, a written questionnaire was created, which is a combination of closed, open and closed-open questions, divided into cell / sub-themes:

- Socio-demographic data on interviewee including the length of imposed prison sanctions,
- Corruption (definition, knowledge on corruption, evaluation of the corruption on the level of prison, personal experience with corruption and motivation for participation in the corruption),
- Anti-corruption (volume, actors and evaluation of the corruption on the level of prison, personal anti-corruptive engagement) and
- Realization of prisoners' rights and efficiency of appealing procedure.

From an instrument constructed like this we should get data that will help us determine:

- Causes of corruption, consquences of corruption, actors and their motivation for corruption
- Assumptions, actors and their motivation for fight against corruption
- Initial image of integrity on the level of prison system.

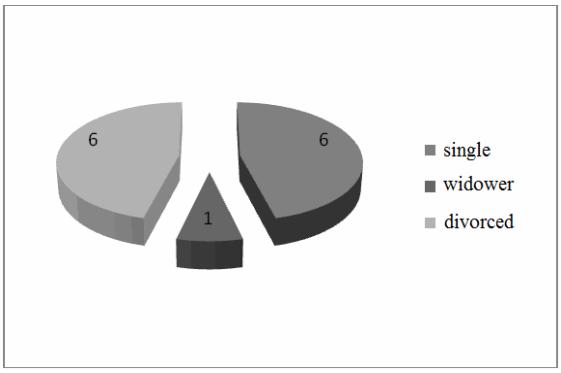
2.2. Sample

The research was realized on the snowball sample. Reasons for the selection of such a type of sample is primarily in the wish to conduct this research without participation of official prison structures and

that the number of filled in questionairres is an additional indicator of both the context in which the research is realized and relation of a prisoner/interviewee to the research topic. The research comprised 13 interviewees, however in data that will be presented in numeric form the number that appears is less than 13. That difference is the consequence of the fact that interviewees did not always fill in all the questions, i.e. some were left blank.

When speaking about the gender, all interviewees are male. Five interviewees are up to 35 years old while eight are older than 35 years.

Grafic 1. Marital status of interviewees



Half of interviewees said that they had no children. At the moment, family members take care of interviees' children, i.e. none of the children is in the system of social care.

In respect of education, the structure of interviewees is diverse. Most of the interviees said that they had high school level of education (6) while there the number of those with higher school (3) and primary school (2) is almost equal. One of interviewees said that he finished school abroad. When speaking about the structure of intrviewees per profession, a wide range of professions may be seen- from unemplozed, self-employed, blue-collars, technicians, managers of middle and higher level, entrepreneurs to free professions..

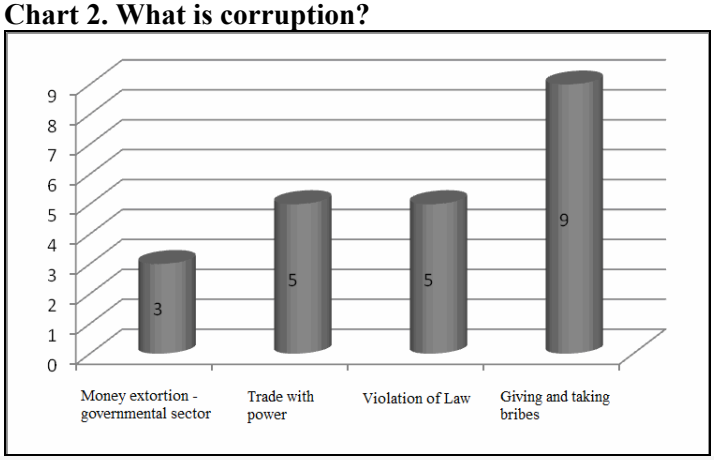
Seven out of 13 interviewees are in the prison for the first time, while others are remand prisoners (second, third and fourth time in prison) which shows a relatively high level of recidivism on this sample.

3. RESEARCH FINDINGS

At the beginning of this part of the research we want to note that research results will be presented at the level of frequency The reasons for such presentation are, on one hand, the sample size which makes it unnecessary to cross, and on the other hand the fact that the crossing on a small sample would bring into question the anonymity of interviewees, which, given the current legal status of interviewees could have negative implications in terms of the trust and eventual speculation about the given answers.

By choosing a maximum of three answers offered to the question of what is, above all, corruption for them, we obtained the following results (see Chart 2)

Chart 2. What is corruption?



The chart clearly shows two things. First, that taking and giving bribes is something that for the most of interviewees is undeniable association with corruption, its first and real symbol. Second conclusion is more important. Namely, for violating the law and trading with power it could be rather said that they are causes of corruption, i.e. indicators of low integrity of the institution, i.e. that informal structure mastered the prison as an institution. From this data we can conclude that among the prisoners, the definition of corruption is related to the environment in which they currently are, and which is by its characteristics in high corruptive risk and low institutional integrity.

The following finding speaks in favor of this. On the scale ``yes, not always, no and I don't know`` interviewees were able to evaluate what is and what is not corruption Giving money to a policeman was rated as corruption by almost all interviewees. It could also be said for the case when someone gives money to the tax officer to pay less tax, or if someone discovers public information for money. However, giving presents to a doctor, the intervention with the professor and the intervention at the employment were rated by the interviewees to be acts that are not always corruption. From these findings we can conclude that there is tolerance for a corruption that is in function of informal payment for services or trade with power, aimed at obtaining something legal or illegal. Thus we come to the conclusion that corruption in the prison has its own support by convicts who have been taught and forced to realize their rights in a corruptive way, and for this reason there is a tolerant attitude towards corruption. Also, this is an argument for the claim that the process of social reintegration in prisons does not give positive results, because it does not create among the prisoners a deflection from the actions that are beyond the law.

In the next section we will present what our participants think about the state of corruption when looking at the past three years and what are their predictions for the next three years, as well as based on what do they create their grades and expectations.

According to the interviewees surveyed, in the last three years corruption has increased a lot in prisons. Eight of them think so, three did not answer, while one of the interviewees thinks that there has been no change. On the other hand, on the plan of the fight against corruption, the volume of undertaken has been reduced, three interviewees say so, one of the participants thinks that there has been progress in the fight against corruption. Other did not answer or did not have attitude related to this issue.

Arguments for a negative assessment of the state of corruption in the past three years are (listed answers to ``open`` questions with certain adjustments to guarantee preventive protection of interviewees' identity):

- "Some do what they want to do"
- "They brought back the Head of the service who beat the prisoners"
- "Boss of influential clan with this gang controls the prison"

- "Boss of influential clan has right to semi-opened department"
- "I've been here for many times and I see what is being done"
- "I am not allowed to speak"
- "It is spoken in public"
- "To realize legal rights you need bonds and money"
- "They send people from Belgrade to work here because they don't "trust" the locals"
- "That is how the system works in prison"
- "The worst go to semi-opened part"
- "Nothing has been done for years, whole families work in prisons"

Regarding the perspective, besides the past belongs to it, the corruption holds the future as well. The majority of interviewees (6) believe that corruption will grow in the next three years. We should add that four of the interviewees believe that the fight against corruption will reduce in the next three years. Only one interviewed believes that fight against corruption in prisons in Serbia will grow.

One part of the instrument was focused on issues that were supposed to give us information who and with what motives and interests enters the corruptive exchange This is a very important data because it speaks about the functionality of corruption as a deviation, i.e. whether there was a legitimization and impunity of corruptive behavior

According to the interviewees, more than the other, participants in the corruption are: treatment officers, judges, Treatment Program Service, influential prisoners (Table 1)

Table 1. – Corruptive actors and motivation for corruption

Actors	Number of interviewees	Motive for corruption according to the opinion of interviewees
Treatment officers	6	(Sell)give privileges for money
Judge	5	Money
Treatment Program Service [5]	4	(Sell)give privileges for money
influential prisoners	4	Get money, privileges, reduction or mitigation of sentence
Other actors	**Motive for corruption according to the opinion of interviewees**	
Prisoners	Get privileges, realize rights, reduce sentence, get better work position, possibility to be "soldier"	
Prisoners' families	Protection of prisoners, facilitation of stay in prison, reduction of sentence	
Head	The function itself bears corruption, there is no control over them, they do what they want to, money	

Most of the interviewees said that judges, heads and prisoners behaved "from case to case", meaning that they sometimes fight the corruption and sometimes they are actors in performing corruptive acts.

When asked to evaluate who on the level of prison fought the corruption and why, we received the following answers (Table 2):

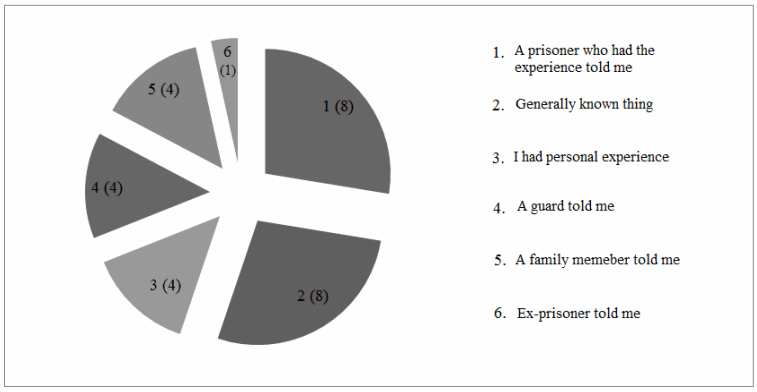
Table 2. Anti-corruptive actors and motivation for anti-corruption

[5] Participants in the research had opportunity to give their attitude about prison services and their members. For example, about the Treatment Program Service and treatment officers then about Security Service and guards.

Actors	Number of Interviewees	Motive for anti-corruption based on the opinion of interviewees
Head	2	Keeps the job
Commanders of the shift	2	Keeps the job
Guards	1	Keeps the job
Other actors	**Motive for anti-corruption based on the opinion of interviewees**	
Treatment officers	They are not asked anything	
Judge	Honesty and justice	

Before presenting the conclusion about this part of the results, we think that it is important to show the finding that speaks about based on what were the previously given evaluations presented.

Chart 3. Informing about the corruption



Results in Chart 3 tell that presented data show have a large dose of relevance, as they were obtained based on personal experience or experiences of those involved in corruption. This is especially related to those who have had personal experience or have talked with those who had, although the fact that a large number of interviewees said it was generally known can worry.

To conclude this part. From the above findings, as the riskiest actors when it comes to corruption, interviewees see that part of the prison system that is familiar to them and on which the quality of the exercise of the rights of prisoners depends, and these are treatment officers, treatment program service, judges and influential prisoners. Also, it is obvious that corruption is in function of the missing resource exchange. On one side there are prisoners with their formally guaranteed rights, and on the other side as "guarantors and controllers" of the same rights that are in a position of decision making, i.e. in a position to (sell) give their authorization for (primarily) money they lack so as to get to the levels of earnings they consider adequate for the work they do. Prisoners' relatives are aware of the described situation and by their actions they legitimize these conditions. On the other hand the state by delaying or insufficient quality of reforms, with the absence of sanctions for corruption acts supports such a condition that ensures the existence of prisons which fail to fulfill their social function.

Related question to the above mentioned is a relationship between corruption and overpopulation. Overpopulation as an indicator of system for the enforcement of criminal sanctions reform is indicative in terms of space, but also success in the process of re-socialization of convicts. Less success in re-socialization increases recidivism of prisoners, and thus overpopulation.

That is why we asked our interviewees how they see the connection between corruption and the evident overpopulation of prisons and what is the effect of this state to corruptive behavior.

Chart 4. Overpopulation and corruption

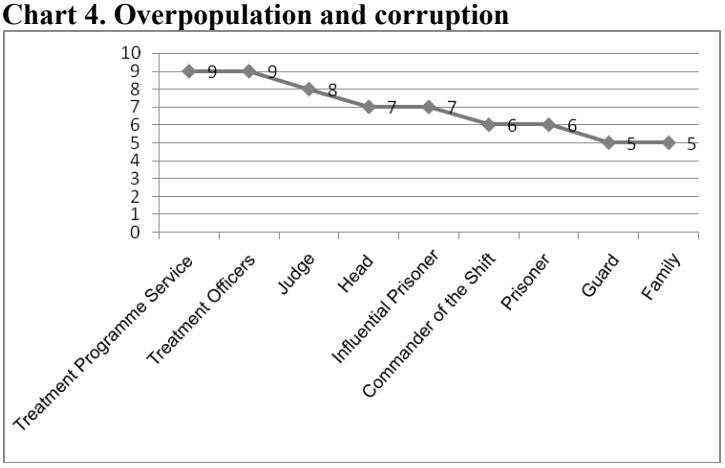


Chart 4 clearly shows that the state of prison overpopulation has a negative effect on corruption at Treatment Program Service, treatment officers, judges, heads and influential prisoners. The link between overpopulation in prisons and the level of corruption can be re-formulated in "more prisoners, more money."

When speaking about relationship of overpopulation and the fight against corruption in prisons, the majority of interviewees think that there is not interdependence between these two phenomena, i.e. that the reduction of overpopulation will not lead to the increase in the fight against corruption as well as that fight against corruption will not reduce overpopulation.

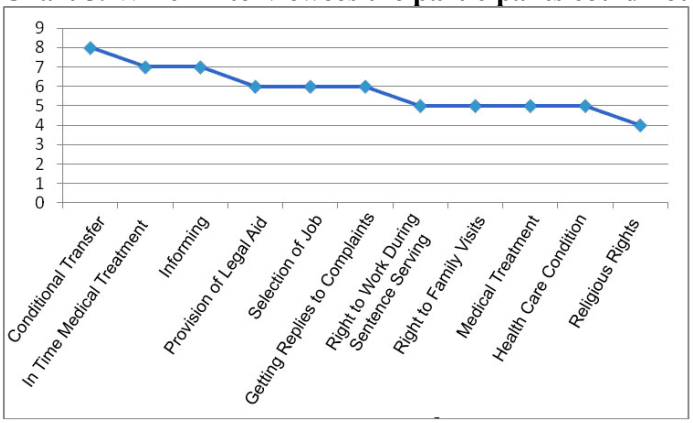
This finding can be interpreted in a way that the factors that generate overpopulation are beyond the scope of the fight against corruption, which gives us the right to claim that the state of corruption and overpopulation are consequences of unsustainability / dysfunctionality of prison system in Serbia, especially the fact that the system for the enforcement of criminal sanctions does not sufficiently perform re-socialization of convicts. Paradoxical, but overpopulation is in the interest of corrupted parts of the prison system, because in that way they "earn" their wages which the state, as an employer does not pay. As well, the state tolerates such behavior, because it is unable to pay the labor cost which would have anti-corruptive character, i.e. labor costs that would be so high that corruptive behavior would not pay off.

Results that we got to the question "Who benefits from corruption?" speak in favor of this. Generally, according to the opinion of all our interviewees, everyone benefits from corruption. More than others, heads, heads of services, treatment service officers, or as one interviewee said, "those who are in positions that can make your life miserable" benefit from the corruption. In addition to these, our interviewees, as those who benefit, specified state officers and public officials who are at high governmental positions, both within the prison system, and the executive system.

In the next part of the presentation of research we will deal with the realization of rights.

Asked to say which rights they cannot realise, the participants in the research stated that these are, above all: conditional accommodation, in time medical treatment, informing, provision of legal aid, selection of job and receiving answers to complaints. (Chart 5)

Chart 5. Which interviewees the participants could not realize?



Obviously, rights that have more existential character for life of prisoners in prison are more violated, as well as those rights that are in function of the protection of these rights: provision of legal aid and receiving replies to the complaint.

According to interviewees, the prisoner may realize all the rights, if he gives money and / or show loyalty. In this way, the prisoner gets weekend leave and "free prisoners" category, better accommodation, ability to work and to have extra visits. When asked what could be gained with the corruption, one third of interviewees refused to answer because of fear.

Directly asked when and under which conditions they would participate in corruption, three interviewed prisoners said that they would not do that, one that he did not want make profit on other's misery, while three prisoners would participate in corruption only if they would protect and realize their rights in this way. The others did not answer this question.

Half of participants in the research said that they were not involved in corruption, while the two responded affirmatively. Others did not answer this question. Those who did not participate in the corruption didn't do so because "they did not have enough money" or "didn't know the terms" or "did not know whom to address."

The main obstacles to greater anti-corruption activism of prisoners are threats and fear of sanctions towards prisoners and prison staff who point to the corruption, then bad law framework, behavior of prison administration, which is non-incentive when it comes to fighting corruption.

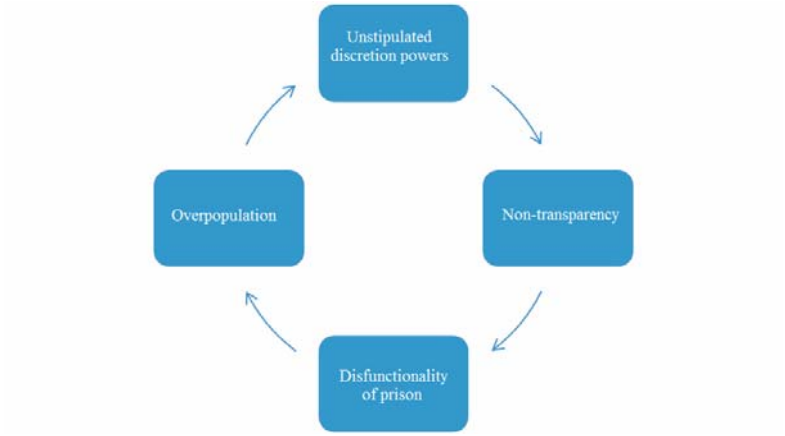
Anti-corruption activism (report and support to the fight against corruption) at prisoners is bound to the realization of the rights that belong to them and guarantee of absence of retaliation, i.e. safety and removal of those who are the initiators of corruption in pris.

4. CONCLUSION

Based on the presented results we can conclude that the corruption on the level of prison has a system character and it means that in prisons in Serbia low institutional integrity rules and that corruption as deviation became functional phenomenon that "supports" in formal survival of prisons, but it contributes to low performance on the plan of re-socialization of prisoners. Namely, in a prison system where there is discordance between needs and resources in prison structures[6] ,a great level of uncontrolled discretion competences as an instrument for "managing unsustainable institution" is given. In the context of corruption it results in the reduction of transparency especially in the area of sanctions and rewards for prisoners, as makes a direct consequence to their socialization. The failure in

[6] This term is related to the Head of Prison and heads of services

the process of re-socialization of convicts directly increases (over)population of prisons i.e. recidivism, which brings us back to the beginning, and this is the growth of need for discretionary decision-making by prison structures. The end result is that the prison is a place of corruption exchange, which provides the existence of this institution, but it prevents it from performing system function – re-socialization of prisoners.
Thus we come to the assumption of corruption determinism on the level of of prison which should be further investigated, because the character of our research does not give us right to bring the conclusions of a general nature, but to bring the initial conclusions within the available research materials



Summed up findings fron the research of prisoners' attitudes speak in favor of this.

First, corruption is primarily considered to be bribery and abuse of power, but also phenomena which are not corruption, like violation of the law, the denial of rights and extortion. Definition of corruption by interviewees is not only the result of theoretical knowledge but also practical experience and adopted terms, which are influenced by social context. Also, a tolerant attitude towards some forms of corruption is not only the result of corrupt context in prisons, but also the evidence that re-socialization process is not on adequate level.

Second, participation in corruption is of general character. Anyone who can or need to realize his rights involves in corrupt exchange, because only it guarantees realization of interests, rights and needs. This applies to prisoners, their families, but also the structure of the prison, the prison staff. The dominant form of corruption is extortion that is exchange between two actors who are not in equal positions. On one hand we have prisoners who are in life extortion, without the adequate legal protection, and the other there are members of the prison system with uncontrolled discretion powers and the low probability of adequate sanctions.

Third, fight against corruption is incidental and is based on personal integrity. Paradoxically, instead of corruption being punishable, the person who points to or refuses to participate in corruption is subjected to a different range of sanctions, from mockery and ostracism to a denial of rights.

Functionality of corruption in the prison system is reflected in the fact that the majority gets something. Prison structures gain loyalty and ability to manage unsustainable institutions and the missing income. Employees in prisons in this way charge for their work and have more relaxed relationship with inmates who, by participating in corruption, gain the possibility of certainty that by paying they can get (il)legal rights.

However, the main problem is that this model of "sustainability" of the prison prevents realization of system function of the prison – re-socialization of prisoners. This results in prisons becoming

institutions in which only prisoners' freedom of movement is restricted, not re-socialization institutions. Prison becomes ``hand-cuffed `` institution that has failed in its social function.

5. RECOMMENDATIONS

All the above-mentioned findings indicate an acute need for the application of the solution from the Analysis[7], because they are the first step on the long road of building the institutional integrity of the prison system. Their use would lead to the reduction and control of discretion competences, increase of transparency of election of management functions, increase of transparency of the system of rewards and sanctions in the part of the enforcement of treatment program, increase of effectiveness of punishment mechanisms, construction of external control mechanisms, inbuilt of explicit anti-corruption provisions in the Law and regulations and development of ethical standards. This would result in improving the position of not only inmates but also the position of all those in function of resocialization of prisoners. This is exactly the main assumption for the penitentiaries to become a place for re-socialization of prisoners, carried out by members of the prison system with a developed personal integrity and work and professional motivation.

It is therefore of particular importance to adopt and implement integrity plans as a legal obligation[8] on the level of the system for execution of criminal sanctions in whose designing, and especially in monitoring of implementation experiences of prisoners and civil society organizations that have dedicated a longer period of time to work on the reform of the prison system, and all this should be taken into account. This prevents that the creation and implementation of integrity plans remain "closed" on the level of prison structure, which despite the best will would be yet another risky move in effort to establish an effective system to combat corruption. Development of integrity plans without taking into account the views and opinions of those who have an interest (the prisoners) and those who have the knowledge, experience and ability to look at the situation from a side at the very beginning may be doomed to failure.

By applying proposed solutions from the Analysis and effective implementation of integrity plans whose monitoring would include civil society as an external correction, would create conditions for the system response to system corruption in the prison. Only the first positive results of applying the above mentioned would create conditions to consider initiation of measures which are yet to improve the protection of whistleblowers at the prison level in a way that it would stimulate the reporting of acts of corruption and which can serve the purpose of re-socialization of prisoners. If such measures were initiated now and if their application was started, we would very soon face their abuse and the fact that another possible anti-corruption instrument was used out.

[7] Analysis, Page 26.
[8] Law on Anti-corruption Agency (Official Gazette 97/2008, 53/2010 and 66/2011). More on integrity plans: http://www.acas.rs/sr_cir/pocetna/41/323.htm