

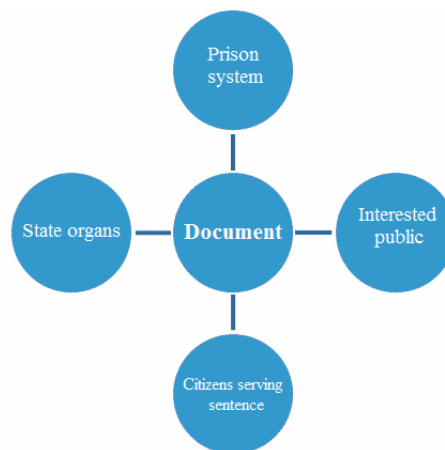
F/ Sociological-Communicological Analyses, Decisions and Explanations

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 seen 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 priori 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 imbalance 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 right and 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 than 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 related 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 not 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 as 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
Controlled by: G.M.

Deputy Head
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.