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Review Paper

The Right of Prisoners to Freedom of Expression

Aleksandar Stevanović[1]
Zoran Pavlović[2]

The authors seek to consider general issues concerning the legal aspects of prisoners' right to freedom of expression. The relevant doctrinal approaches and concepts of importance for the issue in question were analyzed, with reference to the judicial practice, which, from a historical perspective, played a significant role in defining the criteria that justify the restriction of the right to freedom of expression regarding members of the prison population. In this sense, the leading judgments from the case law of the USA as well as the jurisprudence of the ECtHR are pointed out. For the purposes of this research, the right to freedom of expression was viewed in a somewhat broader scope than is the case with the convention and constitutional determination of this right. As part of the right to freedom of expression, matters were analyzed that are usually included and interpreted within the framework of the right to family and private life, considering that maintaining contact with the outside world through the exchange of correspondence is often the most prevalent form of communication that prisoners achieve during incarceration. Also, although most of the analyzed issues refer to prisoners serving relatively longer prison sentences due to their integration into the prison system and living conditions, the principal conclusions and recommendations are equally valid when it comes to persons serving shorter prison sentences,

[1] MA, Research Associate at the Institute of Criminological and Sociological Research. *E-mail*: aleksandar.stevanovic993@gmail.com, https://orcid.org/0000-0002-3637-5846. This research was supported by the Science Fund of the Republic of Serbia, Grant No. 7750249, Project title: *Assessment and possibilities for improving the quality of prison life of prisoners in the Republic of Serbia: Criminological-penological, psychological, sociological, legal and security aspects* (PrisonLIFE). This work is the result of the engagement of the author in accordance with the Plan and program of work of the Institute for Criminological and Sociological Research based on contract no. 451-03-66/2024-03/200039 with the Ministry of Science, Technological Development and Innovation of the Republic of Serbia.

[2] PhD, Full Professor at the Faculty of Law for Commerce and Judiciary of the University Business Academy in Novi Sad, *E-mail*: zoran.pav@hotmail.com, https://orcid.org/0000-0002-9625-1298

detainees, and persons in relation to which some other form of deprivation of liberty was applied.

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Introduction

The processes of "conquering freedom" were necessarily faced with the need to set certain limits, as even in the earliest philosophical thought it was noted that freedom should only be limited by not violating the freedoms of others (Stevanović, 2021, p. 617)[3]. Today, freedom of expression[4] is one of the fundamental personal and political rights in a democratic society and system. According to a number of authors, it is characterized by a dual function in the sense that it is both a goal, and an instrument for the exercise of many other proclaimed rights that today are considered vital achievements of the civilization (Alaburić, 2002).

The right to freedom of expression is defined as a pillar of modern legal systems, and codified in the Universal Declaration of Human Rights (1948)[5]. The regional development of human rights, when it comes to Europe, is embodied in the European Convention for the Protection of Human Rights and Fundamental Freedoms (1950)[6], in which the right to freedom of expression is provided for in Article 10 of the Convention.

Normative practice, both at the international and national levels, recognizes certain restrictions to the right to freedom of expression, and the main point of contention and the core of the problem concerning the exercise of the freedom of expression right is, in fact, the extent and manner of its restriction. In this regard, the literature states that the right to freedom of expression can be restricted for several reasons (Barendt, 2009, p. 502), which is confirmed in the relevant normative practice on a

[3] Various restrictions on freedom and the perception of the absence of coercion and control in its realization determined times and societies as (un)free.

[4] By this term we mean freedom of speech, but also other forms of expression of the state of soul and consciousness, which can be verbal, real, symbolic, etc.

[5] Article 19 of the Universal Declaration of Human Rights states: "Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."

[6] The Law on Ratification of the European Convention for the Protection of Human Rights and Fundamental Freedoms, with protocols ("Official Gazette of the SCG - International Treaties", Nos. 9/2003, 5/2005 and 7/2005 - corr. and "Official Gazette of the RS - International Treaties", Nos. 12/2010 and 10/2015).

comparative level. On the other hand, the undisputed approach today is that a prison inmate retains all civil, political, social and economic rights that can be justifiably limited only for the purpose of effective execution of the sentence (Gluck, 1977; Bianchi, Shapiro, 2018), and the reasons stemming from this are mainly related to security, both inside and outside the institutions, due to which the prisoner's right to expression may be limited. This approach is illustrated by the separate concurring opinion of the judge of the U.S. Supreme Court, Marshall, who stated that a prisoner does not lose his human quality when the prison gates close behind him, adding that his mind does not become closed to new ideas, i.e. his intellect should still be "fed" on a free and open interchange of ideas and opinions. This is a famous case from the U.S. judicial practice, *Procunier v. Martinez*[7], which not only raised the issue of freedom of expression of prisoners to a significant extent, but also set certain standards that essentially narrow the right of the prison administration to limit the prisoners' freedom of expression. In an equally well-known and important decision of the U.S. Supreme Court, *Turner v. Safley*[8], it is explicitly stated that upon obtaining the status of prisoners, they retain the right to free exercise and protection of the rights guaranteed to them by the constitution and that their potential restrictions must be related to legitimate penological goals. A similar approach based on the retention of all constitutional rights is normatively and in principle represented in Great Britain, as well as in Strasbourg jurisprudence (Barendt, 2009, p. 502).

Freedom of expression as a fundamental human right affects both the private and the public sphere of social life. In other words, it is a subjective right that can be exercised in private relationships, while in other cases it performs a certain social function, especially when the presented content refers to issues (persons, phenomena, relationships) of general interest. Bearing the above in mind, the right to freedom of expression in prisons is important both for the prisoner himself and for the public, considering that members of the so-called prison population are sometimes the only, and often the best, source of information about what is happening in prisons, i.e. the manner in which prisoners are treated in them, which certainly falls within the domain of issues about which the public has a legitimate interest in being informed.

[7] Procunier v. Martinez, 416 U.S. 396, 428 (1974).
[8] Turner v. Safley, 482 U.S 78 (1987).

The Nature and Significance of the Prisoners' Right to Freedom of Expression

Today, at least in principle, the approach adopted in the majority of modern and democratic legislations is that a prisoner continues to be a person, i.e. a citizen who enjoys all the rights guaranteed by the constitution and international documents that would be available to him outside the penitentiary institution, while certain restrictions in their exercise can be foreseen to the extent necessary for the execution of the prison sentence. However, not everything during the development of penology and the rights of prisoners was undisputed, and it is fair to say that in the earlier period, the diametrically opposite point of view was dominant in relation to the current one, which is based on the concept of prisoner-citizen. Consequently, in several court decisions, primarily in the USA, it was directly and routinely pointed out that prisoners were slaves to the state[9] who lose their constitutional rights once they start serving a prison sentence[10], and since the end of the 18th century, prisoners (certain categories) were relegated to the status of "civil death"[11], which means that once their conviction became final and they started serving their prison sentence, they lost all civil rights that are guaranteed to citizens "at liberty". Such an approach of the authorities towards the prison population, which in the American doctrine is called "hands-off", was the dominant paradigm in the approach of the state (courts, police, prison administration...) towards prisoners, practically until the period after the Second World War (Frank, 2018, p. 128), with certain shifts that could be observed up to that period.

This can be seen from the system of solitary confinement, a form of the classic system of execution of the prison sentence, which was established as a reaction to the phenomenon of "criminal contagion", highlighted as a negative consequence of the conditions in the earliest penitentiaries, especially through their actions, by Howard, Fry and Bentham, famous as the first prison reformers (Ignjatović, 2021). A more flexible form of solitary confinement, referred to in the literature as the single-cell system, meant that the prisoner would serve the prison sentence continuously in his cell, physically separated from other prisoners, where he was given the opportunity to read religious literature with the idea of making him feel guilty (Ignjatović, 2021). In order to avoid the perceived negative effects

[9] Meachum v. Fano, 427 U.S. 215, 231 (1976); Ruffin v. Virginia, 62 Va. (21 Gratt.)
[10] Ruffin v. Commonwealth, 62 Va. (21 Gratt.) 790, 795-96 (1871).
[11] In 1799, the federal state of New York implemented the category of civil death into its legal system. See more about it in: (Frank, 2018: 126).

of complete physical separation from others, a system was developed that allowed prisoners to work together, but any conversation between the prisoners was strictly prohibited (Ignjatović, 2021).

Today, however, it is indisputable, at least in principle, that such a oncept has been abandoned. The state guarantees the prisoners all those human rights that they would freely exercise if they were not serving a prison sentence, with the possibility of restricting their rights, primarily bearing in mind the reasons of personal and general safety, which also includes the reasons of unimpeded realization of the purpose of punishment. In the second half of the last century, social activism aimed at improving the position of prisoners strengthened as part of a broader movement which, through activist action, advocated for social justice, improving the socio-political position of marginalized groups and the like. In that period, due to the above influences, the courts also began to change their practice, slowly abandoning the application of the "hands-off" doctrine, which resulted in the recognition of certain civil rights of persons serving prison sentences (Frank, 2018, p. 129), and a thorough questioning of the purpose of punishment, owing to which the reintegration of prisoners into society has become the dominant aspiration of modern penal policy.

Over the past two decades, the scope of scientific observation and research on issues related to punishment has expanded in such a way that respect for the human rights of prisoners is now an integral part of penological science (Garland, 2024, p. 26). In addition, today the focus of research on penitentiary institutions and systems around the world is a concept called *the quality of prison life* (Milićević, & Stevanović, 2024, p. 204). It is a concept that permeates complex relationships and structures, and stands between the prevention of criminality and recidivism on the one hand, and the management of prisons, the effectiveness of treatment and the expected social reintegration of convicted persons, on the other hand (Milićević, & Stevanović, 2024, p. 204). In other words, to understand the concept itself, we first need to analyze the moral and social climate in prisons (Milićević, & Stevanović, 2024, p. 205), an integral part of which is undoubtedly the prisoners' right of expression, i.e. the ways and scope of exercising and restricting this right.

Part of the literature points out that the rights of prisoners are prescribed, applied and protected in diametrically opposite ways, which is also apparent from the periodic reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. They include the examples of countries where the practice of treating prisoners involves various forms of torture and where the question of respect for the human rights of prisoners, apart from the right to life and personal safety, is almost never raised. On the other hand, there are also

examples of countries where the level of democratic development allows prisoners to enjoy all human rights, regardless of their status, while the basis, scope and ways of limiting those rights may differ (Trager, & Dickerson, 1999, p. 144). It is within such systems that the nuanced issues of prisoners' right to freedom of expression are most often taken into consideration, and which later, when choosing the best approach, should serve as a guideline for the harmonization, on a comparative (most frequently regional) level, of the rights of prisoners whose respect, primarily by the prison administration, is imposed as essential in a democratic society based on the principles of the rule of law.

Based on the fact that the prisoner is placed in a specific setting, which in a sociological sense, as a rule, implies isolation and separation from the primary setting and environment, as well as from the regular flow of events and activities, and the society outside the prison, the right to *receive information* (from the "outside world") as an important segment of the right to freedom of expression[12] is shown to be particularly important in the context of the prison population.

In any case, the role of prisoners' freedom of expression is multiple and multifunctional, and it seems that there is an agreement in the doctrine that the right to personal development of all persons, including prisoners, as well as the influence (which includes information) on discussions concerning issues of general interest, stand out, not only in terms of the role, but also of the importance that the prisoners' freedom of expression should have in the society. An argument that is frequently mentioned in recent times in support of the *prisoner-citizen* concept, within which the prisoner retains all rights except those necessary to achieve penological goals (the right to freedom of movement is most often restricted), is the expansion of the prison population, which, on a comparative level, is a general trend, and due to which an increasing number of people are temporarily deprived of important rights, important not only for the individual, but also for the society in terms of strengthening its democratic capacities. In addition, results of the research that concerns the quality of prison life from the point of view of prisoners, indicate that they most value better preparation for

[12] In this sense, the European Convention for the Protection of Human Rights and Fundamental Freedoms in Article 10 explicitly states receiving and transmitting (exchange) of information as an integral element of the guaranteed right to freedom of expression, while the Constitution of the Republic of Serbia does the same, stipulating in Article 46 that freedom of thought and expression are guaranteed, as well as the freedom to seek, *receive and impart information and ideas* through speech, writing, art or in some other manner.

release (55.1%), richer content of activities during free time in prison (43.6%), more intense contact with family (37.9%) and more time for leisure activities (31.8%) (Ćopić et. al. 2023, p. 32)[13]. The result stemming from the above is, essentially, the significance of the prisoners' right to freedom of expression, since by avoiding excessive and unjustified interference by the state in the exercise of that right, it contributes to a more meaningful fulfillment of activities during free time and maintaining relations with relatives and friends, which also leads to positive effects in terms of reintegration into society.

Different Categories and Classification of Prisoners' Right to Freedom of Expression

The significance of the prisoners' right to freedom of expression, as well as the scope and nature of that right, can be analyzed more easily within the segments of that right, previously classified in relation to the initial criteria. Thus, the prisoners' right to freedom of expression can be viewed from an individualistic point of view, which is oriented towards issues that primarily concern the personal development of prisoners, while on the other hand, the exercise of that right contributes to a significant extent to the public debate on issues of general importance, due to which the right to freedom of expression can be researched and analyzed in the general social context.

Individualistic model

The individualistic model, as we have termed it for the purposes of this paper, includes aspects of freedom of expression that lead to the prisoner's realization as a person in the philosophical, psychological and sociological sense even in prison conditions, that is, it concerns the intellectual and spiritual development of his personality. It is the need of prisoners that is realized, first of all, through the right to contact with the outside world, which is also guaranteed by the UN Standard Minimum Rules for the Treatment of Prisoners[14]. In this sense, in the part of the document called

[13] This refers to the research that was carried out as part of the PrisonLIFE project, on a sample of 737 convicted adults (14.4% of the total number of prisoners) who are incarcerated in the Sremska Mitrovica Correctional Facility, Požarevac-Zabela Correctional Facility, Niš Correctional Facility, Belgrade Correctional Facility and Correctional Facility for Women in Požarevac.

[14] Document adopted at the 1st UN Congress on the Prevention of Crime and the Treatment of Offenders in Geneva, 1955.

Rules of General Application, within the section *Contact with the outside world*, circumstances concerning correspondence and visits to the prisoner, as well as his information and spiritual needs, are specifically described. In this regard, it is recommended that the prisoner should be allowed to maintain contact with family or trusted friends through correspondence or receiving visits at regular intervals and with the necessary supervision. Also included are situations involving foreign nationals and stateless persons, in relation to which the principle of enabling contact with the outside world should also be applied (in their case, with diplomatic staff and representatives of the state to which they belong, or other organizations that provide assistance to foreign prisoners or stateless persons). Use of the terms delay/interception and supervision by authorized persons of the prison administration, as well as allowing visits by family members and friends who can be trusted, is a clear indication that security reasons are strongly reflected in the norms that regulate the possibility of exchanging correspondence and visiting a prisoner.

In terms of information and meeting the spiritual needs of prisoners, it can be concluded that states should be obliged to guarantee prisoners within their jurisdictions the right to information and meeting spiritual needs. It is specified that this refers to keeping prisoners informed regularly through press, lectures, special institutional publications, radio broadcasts or by other similar means as authorized or controlled by the prison administration. Leaving the possibility for the content of information and ideas that prisoners receive and exchange with the "outside world" to be subject to control, points to the fact that security is a particularly prominent reason for restriction to the right to information, and that the authorities are given room to interpret and define it.

In its jurisprudence, the European Court of Human Rights (ECtHR) considered petitions related to prohibitions, restrictions and censorship regarding the prisoners' interactions with family and friends in the context of Article 8 of the Convention, which guarantees the right to respect for private and family life, including the right to unhindered correspondence, which may be limited in accordance with the law if it is necessary in a democratic society and if it is in the interest of national security, public safety or economic well-being of the country, i.e. if the interference (by the prison administration) is done to prevent disorder or crime, to protect health or morals, or to protect the rights and freedoms of others. The basic starting point of the ECtHR is that in principle and *a priori* limitation of the prisoners' right to free correspondence with family or friends is not in accordance with Article 8 of the Convention, for the reason that this type of restriction of the rights of prisoners is not necessarily connected to the

prevention of disorder or crime, that is, it does not necessarily correlate with the reasons that concern security that could be threatened by correspondence that falls under the Convention right to respect for private and family life of prisoners. Of course, it is possible to prove the opposite, but the reasons for interfering with the above right of the prisoners must not be considered arbitrarily, and this interference must be subjected to the so-called tripartite test, where the burden of proof should be borne by the state, which is represented in the treatment of prisoners through the work and decisions of the prison administration. On the other hand, when it comes to the prisoners' communication with the public in any way or when it comes to the prisoners' right to receive various literature and newspapers, the circumstances of the case must be viewed in the context of the right to freedom of expression and the permitted limitations of that right prescribed by Article 10 of the Convention.

Some authors point out that significant literary works, manifestos and academic works were created precisely while their authors were in prison serving their sentences (Shapiro, 2016, p. 974)[15]. In this context, it is stated that much of the literature that significantly shaped Judeo-Christian civilization was actually composed in prison or similar conditions or in situations where the author was in a kind of exile, forcibly removed or forced to leave the desired social environment (Davies, 1990, p. 3).

The procedural aspects of the individualistic model, although rooted in the right to freedom of expression, essentially and functionally constitute elements of the prisoners' right to defence, that is, the right to a fair trial in the sense of the right guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms. The case of *Golder v. United Kingdom*, which concerned the right of a prisoner to hire a lawyer in order to file a lawsuit against one of the prison guards for defamation, influenced the European Court of Human Rights (ECtHR) to create within its jurisprudence the category of *the right of access to court* as an element of the right to a fair trial, even though it is not explicitly stated in Article 6 of the Convention, which the ECtHR found to be violated in this specific case. The same Court in the case of *Kalda v. Estonia* found a violation of Article 10 of the Convention because the prison administration refused a request sent by a prisoner for access to the Internet, that is, to the *online* version of the official publication that publishes legal regulations and decisions of both domestic courts and the ECtHR. The court pointed out that

[15] In this sense, Cervantes's *Don Quixote* is mentioned, as well as M.L. King's *Letter from a prison in Birmingham*, and we should also bear in mind the famous works of Nelson Mandela, Marquis de Sade, Daniel Defoe, Bertrand Russell, etc.

what happened in this particular case was a matter of banning the free and unhindered receipt of information that has been made available to the public, without prescribing restrictions on the use of that right in relation to the prisoner, which has no basis in national regulations or in the Convention.

The two previously mentioned cases heard by the ECtHR practically reflect the two basic categories of the model that we have termed as procedural, which refer to conversation and exchange, and especially the receipt of information by lawyers in the function of exercising a valid right to defense (which is possible and functionally achievable during incarceration in almost all jurisdictions through the use of extraordinary legal remedies, submission of various petitions and the like), but also for the purpose of representing personal interests during incarceration when they are not related to the reasons for the conviction. On the other hand, providing access to legal regulations and court practice and legal literature has the same role, whereby, as a rule, the prisoner gains information and familiarizes himself beforehand with certain norms in order to plan and prepare his defense in the best way (independently or with the help of a lawyer), be able to protect his own interest during incarceration, and make sure that his behavior and actions while serving prison sentence are in compliance with legal rules.

Access to certain information and content may be relevant in relation to the observance of the rules of criminal procedure and *due process* guarantees, as well as in specific contexts such as the application of advanced technologies within penitentiary systems. Distrust in prosecutors and judges and the slowness of the traditional criminal procedure, in which the judgment is based only on the facts of which the court is convinced, even though the public has already "judged" the defendant, gradually put the natural sciences at the center of the evidentiary procedure, because the results of biological, mechanical and other forensic examinations are considered "objective truth." Over time, it has been noticed that even the courts increasingly rely and refer to this "truth" when making decisions, ignoring the basic procedural principles (Stevanović, 2022:357). This issue is not of a purely theoretical nature, as can be seen from the decision of the Court of Appeals of the State of Kansas, USA, which granted the appeal of the defendent in the case *State v. Walls*[16] due to the violation of basic procedural rights in criminal proceedings (rights of the defendant), since the court, deciding on the terms of probation, did not allow him access to the software that, on the basis of certain parameters, proposes the terms of probation to the court, and for this reason he was not able to possibly challenge the "smart system's" information.

[16] State of Kansas v. John Keith Walls, 116,027, The Court of Appeals of the State of Kansas (2017).

Public interest-based model

The analysis of various aspects of the prisoners' right to freedom of expression can also be observed from the perspective of public interest (*public interest-based model*). In this case, our initial presumption is that prisoners are often the only witnesses to the conditions in penitentiaries (Frank, 2018, p. 117), which the state tries to ignore or cover up for various reasons. In view of that, it is important to consider the issue of the prisoners' ability to address the public while serving their prison sentence. In this sense, comparative practice points to two different categories of such an address. In the case law of the United Kingdom, that is, in the decision made in the case of *R v. Home Secretary, ex p Simms*[17] (2002) 2 AC 115, it is stated that the provisions of the document governing the rights and obligations of prisoners should be interpreted in such a way as to allow the prisoner to give interviews to the press in which he discusses his conviction or even prison conditions, in order for the public to learn about it and be able to make its own judgement, although it follows from the linguistic interpretation of the relevant norm that such a matter requires the permission of the competent state authority. According to the court's decision, such a position is in accordance with the guaranteed right to freedom of expression of prisoners. However, the further explanation states that the protection of a prisoner's freedom of expression does not extend to his public appearance in which he speaks about or debates on political, economic or other social topics[18]. That particular part of the doctrine decision is contested, as it seems rightly, based on the argument that this type of communication with the prisoner, i.e. his address to the public regarding the mentioned topics, can have significance in terms of realizing the public interest (Barendt, 2009, p. 504).

In connection with the previously analyzed right of prisoners to speak publicly about political and economic issues, there is also the prisoners' right to vote[19]. In European countries, that right is regulated in different ways, i.e. in some countries the prisoners' right to vote is absolutely allowed and enabled, while

[17] R v. Home Secretary, ex p Simms (2002) 2 AC, 115

[18] *Ibidem*, 117.

[19] By that right we mean the right to vote in elections for MPs, president of the Republic, bodies of the autonomous province and units of the local self-government, and other elections that are called and organized based on the Constitution and laws, and in accordance with the specific constitutional and political organization of the state and the system of government.

in other countries it is allowed or not allowed to individual prisoners depending on the type of crime for which they were convicted or the duration of the prison sentences imposed, while the other extreme is represented by the states that do not recognize this right for prisoners at all (Dothan, 2016, p. 6). In Ukraine, for example, prisoners are allowed to vote in presidential and parliamentary elections, while this right is not recognized in terms of local elections, since they do not belong to any local community (local self-government) during their incarceration. The solutions in force in Cyprus and Romania are also specific – the prisoners' right to vote is generally recognized, but it can be revoked by the decision of the court that convicted them, and assessment is made in relation to each particular case (Dothan, 2016, p. 6).

Any prisoner can draw attention to abuses committed by the prison administration through whistleblowing, which is prescribed as a legal mechanism for reporting various abuses of public authority, most often corrupt actions. In principle, whistleblowing is recognized as an important instrument in the fight against corruption, and crime in general, which is difficult to detect, monitor, and for which it is difficult to collect evidence on the basis of which specific crimes, most often corruption related, could be prosecuted successfully. Nowadays, whistleblowing is regarded as a concept that goes beyond the legal scope, and is often viewed through the prism of political, cultural, economic, psychological, ethical and other social relations (Stevanović, 2021, p. 91). Considering the concept of whistleblowing through its evolutionary prism, it can be concluded that whistleblowing, essentially, developed from the right to freedom of expression, which is traditionally considered one of the most significant human rights, and such an approach is particularly well represented in the jurisprudence of the European Court of Human Rights (ECtHR). Hence, further development and a kind of emancipation of the term was aimed at the establishment of judicial and administrative guarantees, helping to ensure a more effective protection of whistleblowers from the harmful consequences that may arise for them (Stevanović, 2021, p. 92).

Categorization of the prisoners' right to expression according to the criteria of place, interlocutor (addressee) and method of expression

The literature also refers to the categorization of various types of prisoners' expression, which can be such as to refer to mere *receiving of information*, which is the case with letters and other communications addressed to the prisoner, to the *sending of information and other content by the prisoner*, when the prisoner sends letters or other content to other persons in the same

institution, to *conversation in real time*, which, for example, includes the conversation that the prisoner conducts during a visit or by telephone, and to the *communication that is realized by the prisoner within the institution* where he is staying, with others prisoners and with the prison staff and administration (Bianchi, Shapiro, 2018, p. 4). To this we can certainly add the communication realized between the prisoner and another prisoner who is incarcerated in a different institution, which is naturally realized through correspondence. The position taken in the U.S. jurisprudence is that in such situations there are grounds for security reasons to be analyzed and examined more thoroughly and interpreted more flexibly in case of limiting the right to freedom of expression in that context.

The Role of Prison Administration in Exercising the Prisoners' Right to Freedom of Expression

It should also be taken into account that the prisoners' right to freedom of expression is largely left to the prison administration, both in a formal and informal sense. Certain criminal codes[20] stipulate the rule that criminal offenses committed by a convicted person in the course of serving a prison sentence (and juvenile detention), for which the law stipulates a fine or a term of imprisonment up to one year, will be subject to disciplinary punishment, within the framework of the procedure regulated, as a rule, by the laws governing the execution of criminal sanctions and implemented by the prison administration (warden, commission...). For criminal offenses contained in the group of offenses against honor and reputation, which are essentially prescribed with the aim to protect the honor and reputation of others from presenting and spreading offensive content, prison sentences of up to one year[21] are generally prescribed or they are such that based on them the jurisdiction of the prison administration is established in terms of responding to this type of prohibited behavior.

[20] Such a solution is also in force in the Republic of Serbia, where Article 62, paragraph 3 of the Criminal Code provides that a convicted person who, in the course of serving a prison sentence or juvenile detention, commits a criminal offense for which the law stipulates a fine or a term of imprisonment up to one year, shall receive disciplinary punishment. The relevant provision of Article 168 of the Law on Execution of Criminal Sanctions refers to the competence to initiate the proceedings.

[21] This is also the case in domestic legislation, with the exception of the more serious form of criminal offense Dissemination of information on personal and family life, for which a term of imprisonment up to three years is prescribed.

Regardless of the authority of the prison administration, it is observed that frequent use of offensive content in everyday communication is an integral part of the prison subculture, and it is present, with more or less intensity, in virtually all prison communities, regardless of the dominant cultural aspects of the society. Consequently, the literature suggests that derogatory names, insults and other vulgarisms are part of the prison jargon, which to a significant extent reflects the prisoners' attitude towards the formal normative system, but also the informal way of regulating relations within the prison (Savić, Macanović, 2016, p. 299). Based on these conditions, which have been recognized in numerous research projects, it can be concluded that there is a pattern of behavior in prisons which, in terms of the manner and culture of communication with others (other prisoners, staff members...) implies the use of offensive and vulgar content, largely the result of habits acquired while living "in freedom" while its use develops during incarceration as a mechanism for better adaptation to prison living conditions and deprivation (Kubiček, 2021, p. 81). In view of the above, it is clear that disciplinary proceedings are rarely initiated against prisoners for insults directed at others, especially other prisoners, for which they could be convicted if they were spoken outside prison. The conditions that lead to such a situation are multiple and different in nature, but the dominant reasons seem to be the limited capacities and resources available to the prison administration, the fact that the majority of prisoners have already developed a habit of using offensive content, due to which it would be impossible to respond to every insult, as well as the fact that the main concern of the state, and of the prison administration, is to maintain security in institutions, which primarily refers to the prevention of physical conflicts and the infliction of physical injuries, for which a large number of disciplinary measures are imposed within the institution.

Limitations of the Prisoners' Right to Freedom of Expression

When it comes to the limitation of the prisoners' right to freedom of expression, i.e. the interference of the prison administration, there is no doubt that the dominant reasons for this restriction are the reasons related to security and the achievement of penological goals, which in the majority of countries, at least declaratively, are reflected in the reintegration of prisoners into society. However, we must keep in mind that when conducting "prison policy", making decisions and establishing rules in this sense, and managing prison systems, care must be taken to preclude crime, prevent disorder, establish and maintain order in prisons, and maintain security, all of which are prerequisites for the valid and appropriate treatment of prisoners in order to

prepare them for life in freedom. In this sense, it is clear that both the legislator and the entity that implements the rules that apply to prisoners and their rights and obligations[22], i.e. the so-called prison administration, are in a situation that involves balancing between the achievement of penological goals and ensuring respect for the guaranteed human rights of prisoners who remain their holders regardless of the fact that they are incarcerated, as a result of which in the jurisprudence of the ECtHR a large *margin of appreciation* is left for the states allowing them to restrict the guaranteed human rights in a more intensive and extensive way, if it is necessary to achieve the goals.

On the other hand, the *necessity* of interference is used much too often as an argument and justification for interference, that is, as a cloak under which numerous abuses concerning the restriction of human rights are hidden. In the U.S. practice, for example, prison administrations were known to prohibit the use of certain video games, with the excuse that it helps to prevent the promotion of crime, receiving certain newspapers that mainly write about topics of importance to members of the black race in the U.S., stating that this is a way to prevent racial discrimination (Bianchi, & Shapiro, 2018; Shapiro, 2016), which objectively can hardly be linked to the realization of legitimate and recognized penological goals that justify certain restrictions on the rights of prisoners.

The same restrictions regarding the rights of prisoners were also imposed by prison administrations across Europe. As a result, in several cases (for example, *Mersut Yurtsever and Others v. Turkey*), the ECtHR has found violations of the right to freedom of expression of prisoners, when the prison administration prevented them from receiving the daily press for the reasons that were flexibly extended to maintaining security in the prison. In the case of *Yankov v. Bulgaria*, resolved before the ECtHR, the court found a violation of the right to freedom of expression of a prisoner against whom disciplinary sanctions were imposed due to the fact that (unpublished) notes in which he wrote negatively about the judicial and penitentiary system were found in his possession.

Nevertheless, in numerous cases from comparative practice, the courts have rightly confirmed the decisions of the prison administration which restricted the prisoners' freedom of expression in the broadest sense (regardless of whether a violation of the right to freedom of expression or, perhaps, the right to family and private life was found). For example, in the jurisprudence of the ECtHR, the court concluded on several occasions that the state did

[22] More often, the legislator regulates them in more detail through its own acts within the framework of general rules prescribed in international conventions, constitutions and laws.

not violate the prisoner's right to freedom of expression in specific cases that involved confiscation of a manuscript from a prisoner in which he described and depicted his crime in detail, considering that the publication of such manuscript would negatively affect not only social morality, but also the reputation of other persons who were in any way involved in the specific criminal act[23], or in cases where the prisoner was prevented from maintaining contact with the "outside world" due to reasonable suspicion that in this way, i.e. through such contacts, the prisoner practically becomes involved and takes part in the activities of an organized criminal group, which is particularly manifest in such groups that fall under the "mafia type"[24] of an organized criminal group[25]. In addition, access to Internet content is almost routinely denied to prisoners who have been convicted of crimes committed through the use of or via the Internet, and this is particularly frequent in the U.S. with the prisoners convicted of crimes related to child pornography.

Based on the current practice of the prison administration, viewed on a comparative level, we can conclude that the reasons related to the prevention of crime, protection of national security and preservation of order, i.e. the establishment and maintenance of safe conditions in prisons, are always a sufficient basis for restrictions, which can be determined as necessary in a democratic society. Imposing certain restrictions on the prisoner's right to freedom of expression in this sense, as a rule, also contributes to the realization of penological goals, the dominant being reintegration into society. However, in order for the concept of *prisoner-citizen*, which modern penitentiary systems generally strive for, to be satisfied and realized, it is necessary to determine the existence of reasons for the restriction of rights in each individual case, without applying arbitrary and partial decision-making methods.

Final Considerations

Regardless of the numerous improvements in terms of perception of penitentiary systems and the attitude towards prisoners in general from the perspective of respect for their human rights, a significant part of the public is of the opinion that prisoners should only be physically isolated from the society, without any further involvement in the issues concerning the conditions in which they are serving their sentence, or their keeping

[23] *Nilsen v. the United Kingdom*

[24] See more on this in: (Stevanović, 2018).

[25] *Enea v. Italy*.

and exercising their human rights during incarceration. This situation is contributed by the growing influence of the so-called *actuarial paradigm* concerning the role and objectives of crime control, and its essence is reflected in turning to the most effective methods, with the primary goal being the protection of society against all possible risks, while less attention is paid to the individual, i.e. to the issues of "guilt", "diagnosis", "treatment" and the like[26]. Nevertheless, exercising the right to freedom of expression of prisoners has a positive effect not only on the personal interests of the prisoners, which can be reflected through the aspects that we described in the *individualistic model*, but also on the issues of general, public importance. In this sense, the fact that prisoners are often highly relevant sources of knowledge about events in prisons and conditions of prison life, as well as witnesses of abuses and violations of the convention, constitutional and legal rights of prisoners, is of particular importance.

Starting from the significance that the right to freedom of expression has in a democratic society, but also from the role it plays in the process of reintegration of prisoners into society, which is the main goal and purpose of serving a prison sentence in modern penal systems, it is indisputable that due attention must be paid to this issue in order to improve the quality of prison life, which is important both from the perspective of the prisoner, and of the society to which he belongs and to which he should be reintegrated.

Further consideration of issues concerning the right to freedom of expression of prisoners could be directed and focused on certain categories of prisoners, for example on young people, and especially minors who are serving their sentence in the juvenile prison system, where education is a significant factor, which is achieved precisely through receiving and accessing information. Also, significant insight into the subject matter could be provided by research that would examine the possibilities of applying modern technologies in such a way as to achieve the necessary control with minimal interference from the prison administration and restriction of rights.

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[26] See more on this in: (Ignjatović, 2018, p. 762).

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