

## HUMAN RIGHTS OF THE PRISONERS IN SERBIA\*

Jasmina Igracki, Research Associate  
Ljeptosava Ilijic, Msc, Research Associate  
Ivana Stepanovic, Research Associate  
Institute of Criminological and Sociological Research, Serbia

*A person against whom a criminal sanction is being executed had the rights to protection of fundamental rights stipulated by the Constitution of the Republic of Serbia, the Law on Execution of Criminal Sanctions, international treaties and commonly accepted rules of international law. Limitation of human rights of prisoners is possible only to the extent to which it is necessary for the execution of criminal sanctions, by the procedure which is regulated by the Law on Execution of Criminal Sanctions. Criteria for protection of human rights are being processed on the basis of five fields of observation, and these are prohibition of discrimination, use of coercive measures, use of special measures and procedures, respect of political rights and respect of economic rights. However, good legal groundedness for respect of the rights of prisoners does not necessarily mean their literal implementation in practice, which is confirmed by the data from the report of Ombudsman of Serbia on prisoners' complaints. In these complaints convicts usually express dissatisfaction with conditions of serving sentences, the treatment, subsequent classification and realisation of specific rights within a group, providing medical care, work of the Security Service, realisation of the right to have a holiday and salary as well as the right to adequate nutrition. Authors focus on infringements of fundamental human rights of prisoners which stem from the use of coercive measures and lack of adequate health care.*

*KEY WORDS: human rights / rights and status of prisoners / use of coercive measures / health care*

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## 1. THE RIGHT TO HUMAN DIGNITY: ARE SERBIAN PRISONS DISCIPLINING THE CONVICTS?

Being one of the fundamental human rights, the right to human dignity is thought to be inherent in all human beings. It entered the human rights discourse after the World War II and was regulated for the first time in the Universal Declaration of Human Rights (UDHR, article). In the UN Charter of Human Rights it holds a "central position as it is the first indivisible and universally regulated value", while The European Convention on Human Rights "indirectly" protects it through provisions regulating the right to life, prohibition of torture, prohibition of slavery and forced labour, the right to private life and prohibition of discrimination (Budica-Iacob, 2015: 233).

The International Covenant on Civil and Political Rights states that "persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person" (ICCPR, article 10).

It is enshrined in Article 10 of the International Covenant on Civil and Political Rights (ICCPR) that: '[a]ll persons deprived of their liberty shall be treated with humanity and with respect for the inherent dignity of the human person'

The United Nations' Covenant Against Torture and Other Cruel, Inhuman or Degrading Treatments and Punishments is a treaty that is by itself entirely dedicated to the right to human dignity and it defines torture as "any act by which induces to a person a deliberate physical or mental pain or suffering" (CAT, article 1).

The Constitution of the Republic of Serbia guarantees human dignity and prohibits torture or any inhuman or degrading treatment of persons deprived of freedom. Serbia ratified all the key international and regional human rights conventions including the UN Convention against Torture as well as the Optional Protocol to the Convention.

However, while the legislation is in line with international standards, the problem remains to be implementation. According to Ombudsman of Serbia, monitoring of the treatment of persons deprived of liberty is that torture does not exist in an organized manner and as a measure supported by public authorities, but visits to places of detention confirm that there in fact are "numerous instances of unlawful or inappropriate treatment" of prisoners in Serbia which can sometimes be described as degrading treatment or even torture (Ombudsman, 2015).

The reason for this, according to Ombudsman, is the system itself which seems to be designed in such a way that it does not effectively prevent degrading treatment and lacks a mechanism for detecting such treatments (Ombudsman, 2015).

Since deprivation of freedom essentially means living under "absolute control" as well as living in a limited space without privacy, it can be argued that human dignity is the key human right and it is essential to defend it. It includes not only the prohibition of torture, but also the provision of adequate living conditions such as sufficient nutrition, water and access to healthcare. Moreover, the right to human dignity also includes fairness and justice of rules and procedures, absence of any form of discrimination and refraining from any behaviour that the convict would find humiliating (Understanding dignity and security in prisons).

Wellbeing of persons deprived of their freedom is particularly important due to the fact that a prison sentence should in its essence be a corrective or disciplinary measure rather than a punishment in a traditional sense of the word. Foucault's analyses of modern prisons shed new light on our understanding of the purpose of detention, mechanisms of punishing and power relations behind it. He argues that modernity dismisses the traditional punishment which was an act of torture and deprivation of life through an act of public execution and introduces discipline as the new punishment. This big shift occurred in 18<sup>th</sup> century and was marked by the "disappearance of torture as a public spectacle" and "humanisation" of punishment (Foucault, 1995: 7). Since 19<sup>th</sup> century penalty has a "corrective character" and since body was no longer "the major target of penal repression" the focus was shifted on the soul (Foucault, 1995:8).

The goal of a prison sentence should therefore be to change convict's behaviour by disciplining and not to punishing. However it seems that contemporary 21<sup>st</sup> century prisons are far from what Foucault had in mind. Many authors suggest that the disciplinary logic of prisons has been superseded by other penal projects, especially in the USA (Simon, 2012: 61). Some even argue that repression has displaced the disciplinary power (Fraser 2003: 166), while others claim that repression co-exists with discipline and biopower (Pemberton, 257). Sarah Pemberton suggests that the criminal justice systems in the USA and UK have become more punitive "due to loss of faith in the rehabilitation of criminals" (Pemberton, 259).

On its way to EU accession, Serbia strives to transform its penal policy and conduct a prison reform in order to achieve alignment with international standards. But even though efforts have been made to improve the material conditions in prisons and ensure respect for human rights, especially the right to human dignity, there are still many drawbacks of its penal system.

According to Ombudsman of Serbia, the key achievements in 2015 were the following: 1) adopting a number of sublegal acts regulating the treatment of persons deprived of freedom, 2) material conditions in some places of detention have been improved, 3) Regional Prison in Belgrade now has conditions to offer convicts the opportunity to spend time outside the prison cell in common spaces, and 4) in penal and correctional institutions in Pozarevac and Belgrade the treatment of prisoners has been improved to guarantee the right to dignity while conducting security procedures and during prisoners' movements inside the institution (Ombudsman, 2015).

On the other hand, the list of shortcomings is much longer. Some of the key problems which need to be solved in the future include poor material conditions in some of the prisons, the lack of common spaces which would enable more prisoners to spend time outside their cells, the lack of adequate medical care due to the lack of medical staff and problems in providing medications and therapies, the fact that the majority of prisoners are not engaged in work or in any social activities, the fact that the system of alternative sanctions does not function in the required capacity, the fact that persons who suffer from mental illnesses are treated within the regular prison system which is not adequate for them and the fact that there is only one institution which accommodate female offenders and only one institution that accommodates juvenile delinquents (Ombudsman, 2015).

These findings show that Serbian prisons are not meeting the international standards and that the system does not guarantee the respect for dignity.

## 1.1. The Use of Coercive Measures against Persons Deprived of Freedom

Human Rights Protection is a particularly important and sensitive question in conditions of deprivation of freedom because by detaining a person the basic human right to freedom is taken away. All other human rights should be respected, apart from those that stem from deprivation of freedom. The limitation of human rights should be minimised. The Law on Execution of Penal Sanctions stipulates the basic human rights of prisoners, and the obligation of prison management is to familiarise all the prisoners with these rights. One of the ways to do this is to make all of the regulations related to execution of prison sentences available.

## 2. THE USE OF COERCIVE MEASURES AGAINST PERSONS DEPRIVED OF FREEDOM

The person against whom criminal sanctions have been imposed has the right have their basic human rights stated in the Constitution of the Republic of Serbia as well as in the Law on Execution of Criminal Sanctions and international treaties protected<sup>1</sup>. The limitation of guaranteed rights of prisoners is possible only to the extent it is necessary for the execution of the criminal sanction, by the procedure which is regulated by the Law on Execution of Criminal Sanctions<sup>2</sup>. The issues of the position and rights of persons who were already deprived of one of the basic human rights – the right to freedom are not only regulated in the field of national legislation.

The prison system in Serbia is founded on the idea of the possible reintegration of perpetrators into the community, conflict resolution, offering the chance to compensate the victim, give a sense of responsibility through work in the community and use treatments which have the aim to dismiss or mitigate causes of crime. The concept requires adjustment of the prison system to the concept of "correction in the community"<sup>3</sup>. The Law on Execution of Criminal Sanctions defines the following rights to the convicted person: the right to humane treatment, the right to adequate accommodation, the right to spend at least two hours per day outside the prison cess, the right to nutrition necessary to maintain good health and strength, the right to fee cloths, the right to submit briefs to the authorities, the right to unlimited correspondence, the right to telephone calls in line with the regulations of the House Rules Act, the right to legal help in relation to the prison sentence, the right to have visitors, the right to spend time with a spouse, children or other close persons once in three months for three hours in special rooms within the institution, the right to receive packages, the right to unlimited receiving and sending money, the right to salary, the right to have daily, weekly and annual holiday, the right of a woman to be absent from work during pregnancy and motherhood, the right of a woman who has a child to be assisted by special trained staff within the institution, the right to health care, the right to use daily press, periodicals and other press, the right to have elementary and secondary education, the right to perform religious ceremonies, the right to have and to read religious literature and to have visits from religious representatives, the right to submit briefs and complaints and to complain

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<sup>1</sup> Law on Execution of Criminal Sanctions "Official Gazette of RS", No. 55/2014.

<sup>2</sup> Law on Execution of Criminal Sanctions "Official Gazette of RS", No. 55/2014.

<sup>3</sup> *History of the American penal System* (2004), p. 5.

to authorities in charge of monitoring the institution without the presence of employees at the institution.

This set of rights of the persons deprived of freedom guarantees that only the necessary measures that limit the human rights which are a part of prison sentence will be applied because the prison system is repressive in it and includes many limitations and deprivations. Additionally, the treatment of prisoners should be in line with international and national standards which guarantee human dignity to the persons deprived of freedom.

The criteria for protection of human rights are based on five fields of observation:

1. Prohibition of discrimination,
2. The use of coercive measures,
3. The use of special measures and procedures,
4. Respecting political rights,
5. Respecting economic rights.

Legal regulations disable additional punishments by limitation of other basic human rights, except when this is necessary for execution of the prison sentence. Imprisonment itself brings unfavourable conditions which set prisoners apart from the rest of the population, and therefore protection of their human rights deserves special attention. Today protection of rights of persons deprived of freedom is being realised in three ways: by protecting general human rights which are applied to all people including prisoners; by protecting general rights of prisoners and offering special protection of specific categories of prisoners (women, minors, patients, etc.)<sup>4</sup>.

Wide range of contracts and standards give guidelines for work in prison services. The most important regulations of the international community on standards in human rights protection come from the United Nations where the most important documents are the International Covenant on Civil and Political Rights and International Covenant on Economic, Social and Cultural Rights. These documents contain references on treatment of persons deprived of freedom. There is also a certain number of international documents which are directly related to prisoners and conditions of being held in a prison. International regulations which prescribe minimal standards and conditions of treating prisoners are the following: Standard Minimum Rules for the Treatment of Prisoners,<sup>5</sup> International Covenant on Civil and Political Rights,<sup>6</sup> European Convention on Human Rights,<sup>7</sup> European Minimum Rules for the Treatment of Prisoners,<sup>8</sup> Convention on the Transfer of Sentenced Persons,<sup>9</sup> Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment,<sup>10</sup> European Prison Rules,<sup>11</sup> European Convention on Preventing Torture and Inhuman or Degrading Treatment or Punishment.<sup>12</sup> Standards

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<sup>4</sup> Šeparović, Z. (2003). *Kazneno izvršno pravo i uvod u penologiju*, Zagreb.

<sup>5</sup> Adopted in 1955.

<sup>6</sup> Adopted in 1966.

<sup>7</sup> Adopted in 1950.

<sup>8</sup> Adopted in 1973.

<sup>9</sup> Adopted in 1983.

<sup>10</sup> Adopted in 1984.

<sup>11</sup> Adopted in 1987 and 2006.

<sup>12</sup> Adopted in 1987.

in prisons cannot be lowered below the minimal standards stipulated by international regulations, which ensures prisoners the so called minimal rights which are guaranteed by abovementioned regulations. In addition to these standards, there is also a number of documents on human rights. European documents include: European Convention on Human Rights,<sup>13</sup> European Convention on Prohibition of Torture and Inhuman or Degrading Treatments or Punishment<sup>14</sup> and European Prison Rules.<sup>15,12</sup>

## 2.1. Violation of Human Rights of Prisoners by the Abuse of Power of Public Officials

Convention against Torture<sup>16</sup> commits countries that ratified this document to incriminate acts of torture, attempts of executing torture and all other actions performed by any person which are in fact complicity in an act of torture and to stipulate appropriate punishments which are proportionate to the committed act (article.4). Criminal Code (article 137) defines criminal offense of torture and stipulates that: "the one who tortures somebody or treats somebody in such a way that it hurts their dignity shall be punished with a prison sentence of up to one year. The one who by the use of force, threat or in any other unlawful way causes big pain or big suffer with the aim to gain confession or any information from them or from another person, or to frighten them or unlawfully punish them, or do this with any other motif based on any form of discrimination shall be punished with the prison sentence of six months up to five years.<sup>17</sup> Obviously, the law maker had the intention to (in article 2) incriminate torture, and in article 1 other types of cruel, inhuman or humiliating behaviour or punishing. Thereby the definition of torture is similar to the one stated in the Convention against Torture,<sup>18</sup>and differs from it in one particular issue. Unlike the Convention against Torture which stipulates that torture is considered an act which are conducted by official authority or other person on duty or based on explicit order or acceptance of the official authority, Criminal Code demands that that this act of execution is in any way connected to the acts of official authorities in order to determine it as a criminal act of abuse or torture. Hence the perpetrator can be any person, even if the act of execution has been conducted independently of any acts of official authorities. The same goes for abuse from article 1. If the offence was committed by the official authority, they can be punished with a stronger punishment.<sup>19</sup> The result of this definition of torture and abuse is a fact that in the court practice which rarely has acusations of this crime, for the criminal offence of abuse and torture according to a rule in

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<sup>13</sup> Adopted in 1989.

<sup>14</sup> Adopted in 1989.

<sup>15</sup> Adopted in 1987.

<sup>16</sup>Official Gazette of SRJ (International Treaties),No. 9/91.

<sup>17</sup>If an act from articles 1 and 2 is committed by an official authority on duty, they will be punished for the act from the article 1 with a prison sentence from 3 months to three years, and for the act from article 2 with a prison sentence from one to eight years.

<sup>18</sup>Convention against Torture from 1984 defines torture in the following way: "According to this Convention, the term 'torture' signifies every act by which big physical or mental suffer had been deliberately inflicted upon someone with the aim to gain information or confession from them or from a third person, to punish them for an offense committed by them or a third party or there is a suspicion that they have committed it, or to scare them or to pressure them, or to scare or pressure a third person, or for any other reason based on discrimination, when such pain or suffer is caused by official authority or any other person on duty or based on explicit order or acceptance of the official authority. This term does not refer to pain and suffer caused by the lawful punishment" (Sl. list SRJ (International treaties) 9/91).

<sup>19</sup> The biggest punishment for abuse is 3 years while the highest punishment for torture is 8 years.

most cases official authorities are not accused. When official authorities are being charged for the offences which can be according to the Convention Against Torture and practice of European Court for Human Rights, Committee against torture and Committee for Human Rights can be defined as torture or any other form of abuse, then they are according to a rule charged for the criminal offence of serious bodily harm (article. 121) or minor bodily injury (article.122), or in some cases abuse of authority (article. 359). Abuse can also be sanctioned with the criminal offence of dereliction of duty (article. 361). Official authorities who work at the places of detention are primarily charged for this criminal offence. In the event that the abuse occurred due to the deprivation of adequate health care, a doctor can be responsible and charged for the criminal offence of not providing medical assistance<sup>20</sup> or negligence in offering medical assistance.<sup>21</sup> Other health officers can also be responsible for negligence in offering medical assistance. In the Criminal Code of Serbia torture is incriminated by the criminal offence of extortion of confession (article. 136). This criminal offence is define in the following way: "official authority who uses force or threat or any other unlawful means with the aim to extort statement from the accused, witness or any other person shall be punished with the prison sentence from three months to five years. In the event that the extortion of a statement is followed by serious violence or if extortion of a statement caused serious consequences for thee accused in the criminal proceedings, the perpetrator will be punished with prison sentence from two to ten years".

Every form of abuse or torture, inhuman or degrading treatment against prisoners is prohibited by the international standards and domestic regulations which gerulate the work of Law on Execution of Criminal Sanctions.<sup>22</sup> Abuse can appear in different forms, and misuse of coercive measure by prison officer, insufficient accommodation, deprivation of necessary medical treatment and failing to prevent abuse among prisoners. The state should prevent all of these types of abuse. Here we analyse measures taken to prevent abuse by the prison officers, as well as measures for prevention of abuse by prisoners themselves.

The use of coercive measures is defined as legally allowed acts of official authorities within the state body with the purpose of imposing such behaviours that are needed for execution of laws upon citizens. Excessive or illegal use of coercive measures cause deprivation of human rights such as the right to life, prohibition of torture, inhuman or degrading treatment and punishment, as well as the right to freedom and security of the person.

Doctor who works at the institution should be familiar with their duties related to the use of coercive measures as this is extremely important for prevention and disabling hiding of abuse. Record keeping could at least partially show to which degree the security is applying the legal regulations and to what extent is the medical staff familiar with this problem. Additionally, record keeping is useful for finding offenders who can be interesting interviewees and show possible irregularities in prisons. Institutions for execution of criminal sanctions in Serbia still don't have a unified record keeping system and these procedures are not conducted during the use of coercive measures. Alongside the fact that

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<sup>20</sup> article. 253

<sup>21</sup> article. 251

<sup>22</sup>International Covenant on Civil and Political Rights, 1966, article. 7; Convention against Torture and other cruel, inhuman or degrading treatments and punishments, 1984 i Optional Protocol, 2002; European Convention on Human Rights, 1950, article 3, European Convention on Prevention of Torture and other Inhuman or Degrading Treatments or Punishments, 1987, European Prison Rules, Council of Europe, 2006;

the books which record cases of use of coercive measures are not the same everywhere (which does not pose a big problem), in some institutions doctor's reports issued after the use of coercive measures are not being kept in the records on the use of coercive measures, but are only kept in the medical files of prisoners. In some institutions this report is being kept along the report on the use of coercive measure in the record kept by the security service and in the medical file of the prisoner, while some institutions keep it in three different locations – with the report on the use of coercive measure, kept in the record files kept by the security service, in the medical files of the prisoners and in special records kept by the medical service. All of this does not have to be a big problem, as long as the examinations are being conducted and reports are being produced and handed along with reports of the security service to the head manager of the prison in order to control legality of the use of coercive measures. In some institutions medical examinations are repeated once, between twelfth and twenty fourth hour after applying the measures, as it had been prescribed by the ZIKS,<sup>23</sup> while in some institutions the examination after the coercive measures is being repeated two times, after twelve and then after twenty four hours after the use of coercive measure, as it is prescribed by the previous version of Law on Execution of Criminal Sanctions.

Conditions for the application of coercion towards the convict are regulated in the article 128 of the Law on Execution of Criminal Sanctions: it is stressed that the coercion is possible to apply only in cases when it is necessary to prevent: escape of the prisoner, physical attack on another person, hurting another person, self-injury, causing material damage, active and passive resistance. According to Law on Execution of Criminal Sanctions, Institute for Execution of Criminal Sanctions allows use of physical force to fight resistance of the person deprived of freedom, prevention of prison escape, refusing physical attack on official authorities or other persons deprived of freedom, prevention of hurting other persons, self-injury and causing material damage.<sup>24</sup>

When the immediate cause for the use of coercive measures ceases to exist, the security officer will stop their further use, and the head manager of the prison will be informed on every case of using force against the convict.<sup>25</sup>

Legal solutions which guarantee prohibition of torture and humiliating or inhuman behaviour towards persons deprived of freedom have been imposed and there are also mechanisms of protection of human rights during the execution of prison sentence as well as the regular training of the employees at the Centre for Training and Vocational Training of the Administration. Convicted persons are being informed on their rights and on protection mechanisms which they can use when they think that their rights have been infringed or that there are other irregularities at the institution.

During 2013, managers of prisons have received 653 complains by the convicted persons. Lawsuits for court protection due to the human rights infringements were handed for 49 final decisions of the manager of the Administration per a complaint. Lawsuits usually include complaints about conditions for serving the sentence,

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<sup>23</sup> Law on Execution of Criminal Sanctions in article 130, pg. 3 stipulates: "Immediately after using coercive measures, except for the measure of tying, a medical examination of a prisoner is necessary and it should be repeated between twelfth and twenty fourth hour from the moment of using a coercive measure"

<sup>24</sup> "Official Gazette of RS", No. 55/2014.

<sup>25</sup> The Law on Execution of Criminal Sanctions and the accompanying sublegal acts, the Law on Execution of Non-Custodial Sanctions and Measures and the Action Plan for conducting the Strategy for development of the system for execution of criminal sanctions in the Republic of Serbia until 2020.



treatment, subsequent classifications and realizing special rights within a group, offering medical protection as well as complaints regarding the work of the security service, realizing the right to use annual holiday and having salaries and the right to adequate nutrition. Throughout 2013 the practice in procedures for decision making on subsequent divisions of convicts into groups with lower degree of special rights and deprivation of rights have been aligned, considering the fact that convicted persons have been using the right to complain to the manager of Administration. In this way the application of the Rulebook on treatment, program of conduct, subsequent divisions of convicted persons which stipulates clearly established criteria for the allocation of special rights in line with Law on Execution of Criminal Sanctions, as well as the conditions for the subsequent divisions of the convicts have been improved in this way.

When it comes to the use of coercive measures against persons deprived of freedom, statistical data of the Administration for Execution of Criminal Sanctions (2012) show that there had been uses of: physical force - 183 cases were justified and none of the cases were unjustified, separation and tying - 989 cases were justified and no unjustified cases, rubber batons - 177 cases were justified and one case was unjustified, chemical substances have not been used as well as the water canon or guns, which is a total of 1349 justified and one unjustified case for the use of coercive measures.

Working upon accusations and upon his own initiative, the Ombudsman of Serbia acted upon 548 cases in 2012 when the number of complaints had risen for 4% in comparison to the previous year. Out of 394 complaints during that year the work on 243 complaints or 62% of them has been finished, 151 cases or 38% of them are still in the process. Among the 396 cases there were 524 rights infringements recorded. Throughout 2012, 20 complaints were about torture and other forms of abuse which is 37% less than the previous year. Ombudsman conducted 35 visits to prisons in order to achieve direct contact with the convicts.

It can be concluded that complaints are following the trend from the previous periods and are mainly concerned with the inadequate accommodation, hygiene and nutrition lack of time spent in fresh air, insufficient health protection lack of work, lack of active treatment, divisions into groups, use of coercive measures, right to be informed and getting legal help, irregular conduct of proceedings and unjustified deprivation of freedom, to mention a few.

During 2012 Ombudsman received 90 complains on the work of police authorities. Within preventive work on preventing torture and other forms of abuse in application of police powers, while conducting work of the National mechanism for the prevention of torture, he conducted 41 visits to police stations. In the report period police received 149 recommendations and it has been established that there were cases of torture against persons deprived of freedom.

Statistical data of the Administration of execution of criminal sanctions for 2013 show that there were no unjustified cases of the use of coercive measures, but that there were cases of use of force (155 cases), seclusion (581 case), tying (281 cases), use of rubber button (126 cases), chemical substances and water canon have not been used, and guns were used in 4 cases. This makes a total of 1172 case of use of coercive measures.

Ombudsman is of the opinion that the Administration of execution of criminal sanctions did not realise their role in the battle against abuse during 2013. The Administration did not respect the recommendation of the Ombudsman to establish

responsibility of the officials for the infringement of rights of the offender who was subjected to torture. Institutions for execution of criminal sanctions should in their future work realise their role in the battle against abuse to the full by using all needed measures to prevent abuse, but also to question all complaints on abuse and establish individual responsibility. In order to achieve this it is necessary to strengthen the mandate and authorities of the existent control mechanism (Department for Surveillance) and displace it from the Administration of execution of criminal sanctions as it should be a special unit within the Ministry of Justice. This will not only enable surveilling the work of Administration but also represent a mechanism which can contribute to prevention of abuse in the prison system.

Republic of Serbia does not realise efficient fight against impunity for torture. The Ombudsman registered irregularities in work of institutions for execution of criminal sanctions in many cases throughout 2014. Medical examinations of the convicts after using coercive measures were not conducted in accordance with current standards which are a precondition for determining whether there was torture and a precondition for offering medical assistance to the convicts. The Administration has taken measures to improve medical examinations as well as reporting in case of indications that there was violence. Moreover, the Public Assembly obliged state bodies to fulfil their duties in the fight against impunity for torture in order to question all complaints regarding abuse and establish responsibility and punish the perpetrators.<sup>26</sup>

It is clear that efforts to protect human rights of persons deprived of freedom in Serbia is understood as an attempt to allow privileges to these persons, or to give them more rights than they should have. Even though dignity, the right to physical and psychological integrity as well as the prohibition of torture are guaranteed by the Constitution and many laws and conventions which Serbia ratified, there is a lack of honest belief that these basic human rights are inviolable, that they belong to every citizen, even the one who is arrested, in custody or convicted, or to the person with mental.

Official duty is the mirror of the state. In its diverseness it represents the system within which lies security of the legal order as well as the society as a whole. It is precisely the society that receives the key lines of its portrait through righteous and legal service. This is why every violation of regularity and lawfulness of the service is a bad image of the society. Criminality is in its essence a very dangerous phenomenon. All the more so when it is unpunished or unnoticed. This is how criminal offences against official duty are usually manifested. Public officials who are aware of their responsibilities are hiding their committed crimes in order to gain personal benefit. It is extremely important to nip those intentions in the bud and raise awareness of all the responsible persons to a higher level and thereby strengthen legal security and trust in the legal state.

### 3. THE RIGHT OF PRISONERS TO HEALTH CARE INTERNATIONAL DOCUMENTS

General concept of human rights, elaborated in the Universal Declaration of Human Rights from 1948 stipulates that every human being has "the right to life, freedom and personal security" which means that convicted persons are entitled to all the human rights except for the ones which are limited by the punishment itself (Konstantinović-Vilić &

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<sup>26</sup>"Official Gazette of RS", No. 114/14.

Kostić, 2005: 888). European Convention on Human Rights guarantees certain rights to the persons deprived of freedom and represents the founding document thanks to the work of European Court of Human Rights which has by its theological interpretation of the text of Convention improved the protection of persons deprived of freedom (Marokini, 2010).

The right to health is one of the basic human rights of all the citizens, including the ones deprived of freedom. Regardless of the nature of their offence, prisoners are keeping the fundamental rights to which they are entitled to as human beings, and this includes the right to enjoy the highest achievable standards of bodily and mental health. Limitation of guaranteed rights of prisoners is possible only to the extent needed for the execution of the criminal sanction and by the procedure regulate by the Law on Execution of Criminal Sanctions.<sup>27</sup> Apart from these fundamental rights, prisoners have additional warranties which stem from their status. When a state deprives its citizens from their freedom, it takes over the responsibility to take care of their health within prison conditions and as individual acts which might be needed because of these conditions (Coyle, 2002).

*European Prison Rules*<sup>28</sup> stress out that prison administration must take care of health of all the prisoners under its surveillance, and to provide access to medical services without discrimination on the base of the legal position. Certain international documents are further clarifying what this implies when it comes to health protection provided by the prison administration. *Standard Minimum Rules for the Treatment of Prisoners*<sup>29</sup> stipulate that every penal institution should offer services of at least one qualified doctor who should understand psychiatry. Medical services should be organized in tight cooperation with the general administration of the health service. These services should include psychiatric service for diagnostics, and service for treating cases of mental anomalies when needed.<sup>30</sup> For patients who need special medication transfer to special penal institutions or civil hospitals should be arranged. In the event that hospital treatment is conducted in the penal institution, this institution should be equipped with special materials, tools and medications which will enable patients to be decently treated, and the hospital staff should have sufficient education.<sup>31</sup> Every patient should also be able to use services of a qualified dentist.<sup>32</sup>

Good health condition is of utmost importance because it affects people's behaviour and their capability of functioning as members of the community. It becomes especially important in an enclosed community such as prison community, precisely because conditions of detention can by their nature cause negative consequences on physical and psychological wellbeing of a prisoner. Prisoners should not leave the prison in a worse condition than it was before they arrived. This applies to all the aspects of prison life, especially to health care (Coyle, 2002). Even though the general condition of convicts has been dramatically improved in comparison to the period when contagious diseases were unstoppable spreading, convicts whose health is endangered remain to be one of the biggest obstacles to realisation of the purpose of the prison sentence even today. As it was

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<sup>27</sup>The Law on Execution of Criminal Sanctions "Official Gazette of RS" , No. 55/2014.

<sup>28</sup>European Prison Laws, (2006). Council of Europe, Belgrade. Available at: [www.coe.org.rs](http://www.coe.org.rs) (Accessed 07/05/2016)

<sup>29</sup>Standard Minimum Rules for the Treatment of Prisoners. Available at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/02/Skup-minimalnih-pravila-o-postupanju-sa-zatvorenicima.pdf> (Accessed 07/05/2016)

<sup>30</sup>Rule No. 22. article 2.

<sup>31</sup>Rule No. 22. article 2.

<sup>32</sup>Rule No..22. article 3.

conceived, the ideal prison treatment must include an active convict whose physical and mental health is not an obstacle to the success of the treatment and resocialisation (Pavlović, 2004).

Prisons should not only provide conditions for maintaining health of prisoners and adequate medical protection, but also provide healthy environment for the convicts. International treaties stress out that apart from fulfilling needs of those convicts who are ill, the administration is also responsible for ensuring that the conditions of imprisonment do not pose a threat to the physical and mental health and wellbeing. In this regard, certain standards related to accommodation of convicts sanitary facilities and nutrition are being established. Therefore Standard Minimum Rules for the Treatment of Prisoners stipulate that the dorms<sup>33</sup>, should comply with health and hygienic demands, primarily considering climate conditions and the amount of air, through to reasonable amount of space, lights, heating and ventilation.

On the level of state legislation, the rights of convicted persons are strictly defined. The Law on Execution of Criminal Sanctions in the segment of rights of prisoners which are directly or indirectly related to health care, explicitly stipulate that a convicted person has the right to be treated in a humane way, to adequate accommodation as well as adequate spaces for living and working, sufficient hygiene, nutrition, health care, medical treatments, specialist examinations etc.

The Constitution of the Republic of Serbia, as the highest legal act, proclaims that everyone has the right to protection of their physical and mental health.<sup>34</sup> The Law on Execution of Criminal Sanctions guarantees this right to all the convicted persons according to the general regulations on health care and according to the provisions in this law. It is thereby stipulated that the convicted person to whom cannot be offered adequate health care in the penal institution will be transferred to the special prison hospital or other institution, and a pregnant woman shall be transferred to the maternity hospital.<sup>35</sup> The Law on Health Protection<sup>36</sup> defines the term of health protection as organised and comprehensive activity of the society with the basic aim to realise the highest possible level of maintaining health of the citizens, but also include conducting of measures prevention and early detection of illnesses, injuries and other health conditions and provide timely and efficient treatments and rehabilitation.<sup>37</sup> According to the stated law, the right to health protection belongs to all the citizens of the Republic of Serbia, as well as all the persons who are residents of the Republic of Serbia.<sup>38</sup>

The position and rights of convicted persons, and in line with them the right to health, are determined by many international conventions and highest legal acts of our country. However, good legal foundation for respecting rights of convicts does not necessarily mean their literal implementation in the practice.

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<sup>33</sup>Standardn Minimum Rules for the Treatment of Prisoners, rule 10.

<sup>34</sup>Article 68. Constitution of the Republic of Serbia, "Službeni glasnik" RS. br. 98/2006.

<sup>35</sup>Article. 101. st. 2. Law on Execution of Criminal Sanctions, "Official Gazette of RS" , No. 85/2005; 72/2009; 21/2011.

<sup>36</sup>The Law on Health Protection, "Official Gazette of RS" , No. 107/2005, 72/2009, 88/2010, 99/2010, 57/2010, 119/2012, 45/2013, 93/2014, 106/2015.

<sup>37</sup>Article. 2.

<sup>38</sup> Article. 3.

### 3. 1. Situation in the Field

A large number of convicts are arriving to prison with medical conditions which are caused by neglect, abuse of drugs, or due to life conditions and previous lifestyle. Moreover, a significant number of are coming from the lowest classes of the society and their health condition reflects this. They commonly bring conditions which stem from the previous conditions in which they were treated, addiction as well as many mental problems. Such category of prisoners needs special support and adequate medical care in the prison environment.

Detention conditions can by their nature have damaging influence on physical and mental health of convicts; on the other hand, prison is often perceived as an environment in which spreading diseases is easy, precisely because of the repeated exposure to risky factors and situations.

The most important health conditions of prisoners in Serbia include: problems caused by drug addiction, illnesses of the locomotive apparatus, HIV and hepatitis C, as well as other infective diseases, tuberculosis, mental illnesses, but also chronic illnesses or the elderly and the disabled. The presence of abovementioned illnesses in prisons conditions adjustment of the institution to providing intensive and professional medical protection, because it is mainly serious health conditions that require such care (Pavlović, 2008:833). However, it seems that penal institutions are not ready enough to adequately react to such illnesses in regards with material, professional and spatial conditions.

Having overcrowded penal institutions means that there is a large number of convicts in limited spaces with very little or no freedom of movement, and such situation can be a dangerous threat to health. For example, persons who suffer from extremely contagious diseases such as tuberculosis can be very close to other prisoners and in poorly ventilated spaces and in that way expose prisoners nearby to the danger of the disease. Persons who are not able to wash their clothes can inflict skin diseases and parasites and can, due to the lack of bedding or even bed, transmit their disease to other convicts (Coyle, 2002).

Convicts infected with HIV are in the hardest position. The illness itself is more than any other burdened with prejudices and stereotypes, and patients cause negative reactions in their surroundings, often marked by the feeling of fear (Pavlović, 2005:834). This attitude is supported by researches on risky and protective factors and levels of sensitivity to HIV which suggest that there is just over 20% of prisoners have knowledge about HIV, and 84% of prisoners have a discriminatory attitude towards infected persons (Krstić et al. 2008).

One of the main problems for persons living with HIV in prisons is their isolation from other institutions, organisations and programs which are aimed at this population, and they are often detached from all the programs of prevention, treatments and help. There is no need to stress out that quality medical care is a priority regarding treating patients with HIV in prisons (Pavlović, 2008).

Apart from raising awareness on HIV and other illnesses among prisoners, it is also necessary to enable access to information on organisations that are active in this field, other specialised health institutions providing treatments and individuals offering services in this sensitive category.

Council of Europe and United Nations recommend mandatory medical checkups for prisoners upon their arrival to the institution, and every prison should have trained medical staff. Early detection of infective diseases, early diagnostics and appropriate medical care and treatments has to be a part of everyday practice in institutions such as prisons.

One of the main problems related to prevalence is a very high number of convicts who are addicted to drugs. According to official reports of the Administration of execution of criminal sanctions (2013) there are about 2870 addicts in penal institutions. The stated number of addicts should be taken with reservations, considering the fact that official reports offer only a number of addicts who reported their addiction upon arrival to the institution. The dark number is much higher, and this is due to unreported addicts, as well as undiscovered cases of addiction. Capacity of the "drug-free department" is only 18 beds, and considering the fact that there were approximately 190 addicts in this department during 2013, there is no need to mention that the capacity is insufficient.

Legal provisions should be critically assessed, especially the Law on Execution of Criminal Sanctions which has certain drawbacks and limitations that require attention. Namely, the Law on Execution of Criminal Sanctions stipulates that treating addictions must be conducted in a prison hospital, and not in all prison institutions in Serbia. This points towards the problem of remaining (27) prison institutions which are legally left incapable to offer treatments for addicts (Ilić & Jovanić, 2011).

Prisons throughout the world offer a myriad of effective aimed programs for dealing with this population which are based on and adjusted to individual needs of every convict. Continual collaboration with the family and social environment, but also continuation of monitoring patients after they have left the prison institution are the main feature of well conducted treatments which offer good practical results in treating addictions and regarding recidivism (Ilijić & Jovanić, 2015). Sadly, Serbia does not follow this developed penology practice regarding availability of treatments and rehabilitation of addicts in the prison population. The lack of good rehabilitation treatments, bad cooperation with other social and health services and poor material and professional conditions additionally aggravate already modest possibilities for offering adequate health care.

## CONCLUSION

Even though human dignity, the right to inviolability of physical and mental integrity and prohibition of torture, inhuman or degrading treatment or punishment are guaranteed by the Constitution of Republic of Serbia and many laws, as well as international treaties which Serbia ratified, there is a lack of honest belief that these fundamental rights inviolable and that they belong to every citizen including the one who has been arrested, or in custody or convicted. Life in prison should begin and continue within the framework of justice and righteousness in such a way that it minimises the feeling of disempowerment and clearly shows that these people are still citizens with rights and obligations (Coyle, 2002).

When the state deprives its citizens of freedom, it overtakes responsibility to take care of their health, in the sense of imprisonment conditions and in the sense of particular acts which are needed because of these conditions. Constitutional provisions which guarantee inviolability of physical and mental integrity, or stipulate that noone should be subjected to

torture, inhuman or degrading treatments or punishments or medical experiments without their consent are crucial for the respect of human rights as well as for health protection of prisoners (Batrićević, Ilijić, 2014).

Having in mind all the limitations in prison institutions which stem from unfavourable material conditions, lack of trained staff and limitations stemming from the nature of prison institution, all services are nevertheless making efforts directed at respect of human rights. A large number of complaints made by prisoners show that these efforts are not enough.

## REFERENCES

1. Albrecht, H. (2002). Immigration, crime and unsafety –in: *Crime and Insecurity: The Governance of Safety in Europe* (Craford A. Ed.), Portland
2. Batrićević, A., Ilijić, Lj. (2014). Health Care of Prisoners as a Crime prevention factor-General Standards and Conditions in Serbia. In: Milašinović, S. Simović, D. & Simeunović-Patić, B. (Ur.) *Thematic Conference Proceedings of International Significance. International Scientific Conference "Archibald Reiss Days"*. Academy of Criminalistics and Police Studies. Vol. 1. pp. 441-450
3. Budica-Iacob, M. (2015). "Human Dignity in the European and International Legislations", *International Journal of Arts & Sciences*, pp. 233-238
4. Burke, R. (2007). Moral Ambiguity, the Schizophrenia of Crime and Community Justice, *British Journal of Community Justice*, No. 1.
5. Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (1996) Available at: <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx> (Accessed 07/05/2016)
6. Coyle, A. (2002). *Ljudska prava u upravljanju zatvorima i kaznionicama-priručnik za osoblje zatvora*. King's College London & Međunarodni centar za zatvorske studije
7. European Convention on Human Rights. Available at: [http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf) (Accessed 07/05/2016)
8. Evropska zatvorska pravila, (2006) Beograd: Savet Evrope. Available at: [www.coe.org.rs](http://www.coe.org.rs) (Accessed 07/05/2016)
9. Foucault, M. (1995). *Discipline and Punishment: The Birth of Prison*. New York: Vintage Books
10. Godišnji izveštaj Uprave za izvršenje krivičnih sankcija, (2013). Ministarstvo pravde i državne uprave Republike Srbije
11. Ignjatović, Đ. (2005). Karakter i motivi novih izmena krivičnog zakonodavstva Srbije, *Revija za kriminologiju i krivično pravo*. Beograd: Srpsko udruženje za krivično pravnu teoriju i praksu i Institut za kriminološka i sociološka istraživanja. No. 1 pp. 29-60
12. Ignjatović, Đ. (2006). Nova rešenja u Zakonu o izvršenju krivičnih sankcija i iskustva u njihovoj primeni. U: Bejatović, S. (Ur.) *Nova rešenja u krivičnom zakonodavstvu i dosadašnja iskustva u njihovoj primeni*. Beograd: Srpsko udruženje za krivičnopravnu teoriju i praksu. pp. 475-494.
13. Ignjatović, Đ. (2006a). *Pravo izvršenja krivičnih sankcija* (I edition), Beograd
14. Ignjatović, Đ. (2010b). *Pravo izvršenja krivičnih sankcija* (IV edition), Beograd
15. Ilić, Z., Jovanić, G. (2011). *Zatvor i/ili sloboda pod nadzorom*. Beograd: Fakultet za specijalnu edukaciju i rehabilitaciju
16. Ilijić, Lj., Jovanić, G. (2015). Prisustvo i upotreba psihoaktivnih supstanci u zatvorima. U: Vejnović, D. & Milić, S. (Ur.) *Nauka-društvo-tranzicija*. Zbornik radova sa međunarodnog

- naučnog skupa "Doprinos nauke razvoju društva u tranziciji." Banja Luka: Evropski Defendologija centar. Vol. 2. pp. 582-593.
17. International Covenant of Civil and Political Rights (1966) Available at: <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (Accessed 07/05/2016)
  18. Jovašević, D. & Stevanović, Z. (2011). *Kazne kao oblik društvene reakcije na kriminal*. Beograd: Institut za kriminološka i sociološka istraživanja
  19. Konstatinović-Vilić, S. & Kostić, M. (2005). Evropski standardi za izvršenje krivičnih sankcija. *Pravni život*, Vol. 9. pp. 887-902.
  20. Marokini, M. (2010). Zaštita ljudskih prava i zaštita prava zatvorenika. *Pravo i društvo*. Vol.1. str. 35-58
  21. Ombudsman of Serbia (2015). National Preventive Mechanism: 2014 Report. Belgrade Available at: [http://www.apt.ch/content/files/npm/eca/Serbia\\_NPM%20Annual%20Report%202014.pdf](http://www.apt.ch/content/files/npm/eca/Serbia_NPM%20Annual%20Report%202014.pdf) (Accessed 07/05/2016)
  22. Ombudsman of Serbia (2016). *Redovan godišnji izveštaj Zastitnika građana za 2015 godinu*. Belgrade. Available at: <http://www.zastitnik.rs/index.php/izvestaji/godisnji-izvestaji> (Accessed 07/05/2016)
  23. Pavlović, M. (2008). Specifični problemi zatvorske populacije zaražene HIV virusom. *Pravni život*, Vol. 9. pp. 833-843.
  24. Penal Reform International (2015) *Balancing Security and Dignity in Prisons: a framework for preventive monitoring*. Available at: <http://www.penalreform.org/wp-content/uploads/2016/01/security-dignity-2nd-ed-v6.pdf> (Accessed 07/05/2016)
  25. Pihler S. (2006). Novi Zakon o izvršenju krivičnih sankcija Republike Srbije. U: Radovanović, D. (Ur.) *Novo krivično zakonodavstvo: dileme u teoriji i praksi*, Beograd: Institut za kriminološka i sociološka istraživanja i Viša škola unutrašnjih poslova. pp. 553-559
  26. Shalev S. (2003). *Supermax – Controlling risk through solitary confinement*, Cullompton
  27. Simon, J. and Sparks, R. eds. (2012) *The SAGE Handbook of Punishment and Society*. New York: SAGE
  28. Soković, S. (2005). Nova rešenja u predlogu ZIKS. U: Radovanović, D. (Ur.) *Kazneno zakonodavstvo-progresivna ili regresivna rešenja*. Beograd: Institut za kriminološka i sociološka istraživanja i Viša škola unutrašnjih poslova. pp. 477 - 490.
  29. Standardna minimalna pravila o postupanju sa zatvorenicima. Available at: <http://www.bgcentar.org.rs/bgcentar/wp-content/uploads/2013/02/Skup-minimalnih-pravila-o-postupanju-sa-zatvorenicima.pdf> . (Accessed 07/05/2016)
  30. Stevanović, Z., Igrački, J. (2012). Kriza penalnog sistema – od prevelikih očekivanja do razočarenja. *Pravna riječ – časopis za pravnu teoriju i praksu*. Banja Luka. Vol. 33. Str. 291-303.
  31. Stevanović, Z., Igrački, J. (2012). Stroga kaznena politika u fazi izvršenja kazne zatvora. U: Selman, Dž. (Ur.) *Kaznena politika – raskol između zakona i njegove primene*. Istočno Sarajevo: Ministarstvo pravde Republike Srpske. Srpsko udruženje za krivično pravnu teoriju i praksu. pp. 323-335.
  32. Stevanović, Z., Igrački, J. (2014). Mogućnosti zloupotrebe ovlašćenja moći zatvorske administracije u tretmanu zatvorenika. *Zloupotreba moći*. Beograd: Udruženje za međunarodno krivično pravo. pp. 376-384.
  33. Stevanović, Z. (1997). Zaštita integriteta i dostojanstva ličnosti u izvršenju krivičnih sankcija. U: Jovanović, S. (Ur.) *Ustavnost i zakonitost u zaštiti ljudskih sloboda i prava*. Beograd: Institut za kriminološka i sociološka istraživanja. pp. 167-177.
  34. Stevanović, Z. (2005). Kako novim zakonskim rešenjima unaprediti penalni sistem. U: Radovanović, D. (Ur.) *Kazneno zakonodavstvo-progresivna ili regresivna rešenja*. Beograd: Institut za kriminološka i sociološka istraživanja i Viša škola unutrašnjih poslova. pp. 507 - 514.



35. Stevanović, Z. (2009). Nove tendencije u upravljanju zatvorima. *Revija za kriminologiju i krivično pravo*. Beograd: Srpsko udruženje za krivično pravnu teoriju i praksu i Institut za kriminološka i sociološka istraživanja. br. 2. pp. 147-159.
36. Universal Declaration of Human Rights (1948). Available at: <http://www.un.org/en/universal-declaration-human-rights/> (Accessed 07/05/2016)
37. Ustav Republike Srbije, Službeni glasnik RS. br. 98/2006
38. Zakon o izvršenju krivičnih sankcija, Službeni glasnik RS, br. 85/2005; 72/2009; 21/2011
39. Zakon o zdravstvenoj zaštiti, Službeni glasnik RS, br. 107/2005, 72/2009, 88/2010, 99/2010, 57/2010, 119/2012, 45/2013, 93/2014, 106/2015

Jasmina Igrački, istraživač saradnik  
Mr Ljeposava Ilijić, istraživač saradnik  
Ivana Stepanović, istraživač saradnik  
Institut za kriminološka i sociološka istraživanja, Srbija

## LJUDSKA PRAVA ZATVORENIKA U SRBIJI

*Lice prema kome se izvršava krivična sankcija ima prava na zaštitu osnovnih prava propisanih Ustavom Republike Srbije, Zakonom o izvršenju krivičnih sankcija, međunarodnim ugovorima i opšteprihvaćenim pravilima međunarodnog prava. Ograničavanje zagarantovanih prava zatvorenika moguće je samo u meri u kojoj je to neophodno za izvršenje krivične sankcije, postupkom koji je regulisan Zakonom o izvršenju krivičnih sankcija. Kriterijumi zaštite ljudskih prava obrađuju se na osnovu pet polja posmatranja, a to su zabrana diskriminacije, upotrebe prinudnih mera, upotrebe posebnih mera i postupaka, poštovanje političkih prava, poštovanje ekonomskih prava. Međutim, dobra zakonska utemeljenost za poštovanje prava zatvorenika, nužno ne znači i njihovu doslovnu implementaciju u praksi, što potvrđuju i podaci iz izveštaja Zaštitnika građana o žalbama zatvorenika. U žalbama osuđeni najčešće izražavaju nezadovoljstvo uslovima za održavanje kazne, tretmanom, naknadnim razvrstavanjem i ostvarivanjem posebnih prava u okviru grupe, pružanjem zdravstvene zaštite, a tu je i nezadovoljstvo u pogledu rada Službe za obezbeđenje, zatim ostvarivanja prava na korišćenje godišnjeg odmora i naknada za radno angažovanje, kao i prava na adekvatnu ishranu. U ovom radu, autori pažnju usmeravaju na povredu osnovnih ljudskih prava zatvorenika, koja proističu iz upotrebe sredstva prinude, kao i nepružanje adekvatne zdravstvene nege i zaštite.*

*KLJUČNE REČI: ljudska prava / prava i položaj zatvorenika / upotreba sredstava prinude / zdravstvena zaštita*