

HEALTH CARE OF PRISONERS AS A CRIME PREVENTION FACTOR – GENERAL STANDARDS AND CONDITIONS IN SERBIA

Scientific Associate **Ana Batrićević**, PhD

Institute for Criminological and Sociological Research, Belgrade

Research Associate **Ljeposava Ilijić**, MSc

Institute for Criminological and Sociological Research, Belgrade

Abstract: Appropriate health care and adequate medical treatment of prisoners with health issues and intensive rehabilitation of drug and alcohol addicts during the execution of prison sentence may be considered one of the factors that contribute to their successful re-socialization. Social reintegration of former prisoners, particularly through their reintroduction to the labor market is perceived as a powerful means to reduce recidivism and, hence, protect the society from crime. However, that goal cannot be achieved if their physical or mental health is harmed. Managing to preserve physical and mental health in spite of being exposed to numerous prison deprivations, represents a precondition for re-entering regular life courses in post release period, such as: initiating or proceeding education or professional training, entering or returning to the labor market, finding and keeping a job as a legal source of income and becoming a useful member of the community. Apart from being one of fundamental human rights, the fact that it represents a precondition for successful social reintegration is also the reason why prisoners' health and minimal standards regarding their medical care are prescribed by various legal documents of national and international character and monitored by competent entities including independent bodies such as ombudsperson and non-governmental organizations. Being aware of the importance of the implementation of national and international prisoner's health care standards for both – human rights protection and crime prevention, the authors briefly analyze legal documents regulating this issue and critically examine current conditions in Serbian prisons pertinent to the fulfillment of minimal health care requirements, treatments available for prisoners with HIV or hepatitis and rehabilitation programs for drug and alcohol abusers and, finally, give suggestions for the improvement of the existing situation.

Keywords: prisons, prisoners, health care, medical treatment, crime prevention

INTRODUCTORY REMARKS

The term “health protection“ i.e. “right of health protection” is defined as the right of a person to require other persons to conduct certain activities within their authority in order to conserve and improve his or her health.¹ Health is the condition of human organism in which all organs function regularly without the feeling of pain. It does not refer only to the absence of disease or disability, but includes complete physical, mental and social welfare.² The right of health protection may be perceived from two perspectives: as the right of access to certain health services and as state's obligation to undertake appropriate measures in order to provide equal approach to health protection for all the citizens.³ The importance of health protection of all citizens is indisputable in modern democratic societies, but that issue appears to be even more serious in the case of persons deprived of liberty. The execution of prison sentence is inevitably followed by a series of deprivations, the most frequent of which are: deprivation of liberty, deprivation of material goods and services, deprivation of heterosexual relationships, deprivation of autonomy and deprivation of safety⁴.

1 Radišić, J. (2008). *Medicinsko pravo*. Beograd: Pravni fakultet Univerziteta Union, Nomos, 55-57.

2 Article 2, Constitution of the World Health Organization (Off. Rec. Wld Hlth Org., 2, 100), <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>, 16.12.2013

3 Paunović, M., Krivokapić, B., Krstić, I. (2007). *Osnovi međunarodnih ljudskih prava*. Beograd: Megatrend Univerzitet, 274.

4 Konstantinović Vilić, S., Kostić, M. (2006). *Penologija*. Niš: Sven, 221.

Isolation from the outer world and continuous dwelling in a „total” institution produces numerous consequences affecting physical and mental health of inmates. The aim of prison sentence (within general purpose of criminal sanctions)⁵ is to encourage the offender to embrace socially acceptable values and contribute to his social reintegration through various programs and treatments⁶. In that sense, it can be argued whether a person whose physical and/or mental health are seriously harmed or deteriorated during the enforcement of prison sentence can be expected to become a useful member of the community. From that standpoint, it seems obvious that adequate health care of prisoners, particularly those who suffer from serious mental or physical illnesses, can be considered one of the means of crime prevention.

In contemporary legal systems, health protection of all citizens, including those deprived of liberty on the basis of a final court decisions, is considered one of fundamental human rights proclaimed on national and international level. Accordingly, standards for health care of prisoners can be found in two groups of legal sources. The first includes the documents regulating general standards of health protection, whereas the second is comprised of documents setting minimal standards for the execution of prison sentence and respect of prisoners' human rights. In 1946, the Constitution of World Health Organization, declared Health as one of fundamental and inalienable rights of every person, regardless of racial, religious, political, economic and social differences.⁷ Right of health, defined as the right of every person to live under circumstances and standards that provide health and welfare of every individual and his family is also proclaimed in the Universal Declaration of Human Rights.⁸ International Covenant on Economic, Social and Cultural Rights also recognizes the right of everyone to the enjoyment of the highest attainable standard of physical and mental health and it recommends the steps that should be taken by the States Parties in order to achieve the full realization of this right.⁹ The Revised European Social Charter, *inter alia*, calls upon its signatories to provide the conditions in which everyone has the right to benefit from any measures enabling him to enjoy the highest possible standard of health attainable.¹⁰ These documents treat the right of health as a moral principle or a political postulate according to which all citizens have access to health care under equal conditions and without discrimination.¹¹

Modern legal systems recognize that the execution of prison sentence in the manner that increases the suffering caused by the deprivation of liberty can neither improve the efficiency of punishment nor fulfill its essential purpose – special and general prevention¹². It is widely accepted that the humanization of the conditions under which prison sentence is served represents a global standard embodied in a series of international documents – guarantees of prisoners' fundamental human rights, the most relevant of which are: Standard Minimum Rules for the Treatment of Prisoners¹³, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment¹⁴, European Convention for the Prevention of Torture

5 Paragraph 4, Subparagraph 2, Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005, 107/2005, 72/2009 and 111/2009

6 Paragraph 31, Law on the Enforcement of Criminal Sanctions, Official Gazette of the Republic of Serbia, No. 85/2005, 72/2009 and 31/2011

7 Constitution of the World Health Organization (*Off. Rec. Wld Hlth Org.*, 2, 100), <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>, 16.12.2013.

8 Article 25. *The Universal Declaration of Human Rights, General Assembly Resolution 217 A (III)*, <http://www.ohchr.org/en/udhr/pages/introduction.aspx>, 14.09.2013.

9 Article 12. International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27, <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>, 16.12.2013.

10 Article 11. Revised European Social Charter, Council of Europe, Strasbourg, 3.5.1996, European Treaty Series, No. 163., <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=163&CM=8&CL=ENG>, 16.12.2013.

11 Radišić, J. (2008). *op.cit.*, 58.

12 Soković, S. (2002). Zaštita i ograničavanje prava osuđenih lica. *Pravni život – časopis za pravnu teoriju i praksu*, 51 (9), 530.

13 Standard Minimum Rules for the Treatment of Prisoners, The Economic and Social Council resolutions 663 C (XXIV) of 31.06.1957. and 2076 (LXII) of 13.05.1977., <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>, 16.12.2013.

14 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, in accordance with article 27 (1), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>, 16.12.2013.

and Inhuman or Degrading Treatment or Punishment¹⁵, European Prison Rules¹⁶ and General Reports of the European Committee for the Prevention of Torture and other inhumane or degrading punishments or procedures¹⁷. Finally, the European Convention for the Protection of Human Rights and Fundamental Freedoms¹⁸ contains the ban of torture and other inhumane or degrading procedures or punishments¹⁹. The ratification of this international document by the Republic of Serbia led to a significant procedural improvement in our country's rather developed normative framework dedicated to the protection of prisoners' human rights by allowing them to send individual applications to European Court of Human Rights.²⁰

NORMATIVE FRAMEWORK FOR PRISONER'S HEALTH PROTECTION IN SERBIA

Normative framework relevant to the protection of prisoners' human rights in Serbia, including the right of health protection includes: the Constitution, Law on the Enforcement of Criminal Sanctions and Regulation on House Order in Penitentiary Institutions. The Constitution of the Republic of Serbia proclaims that every citizen has got the right of protection of his physical and mental health.²¹ Constitutional provisions protecting citizens' physical and mental integrity are also worth mentioning, as well as those prescribing that no citizen may be exposed to torture, inhumane or degrading treatment or punishment or subject to medical or scientific experiments without his agreement.²² Constitutional provisions that prohibit any kind of violence against persons deprived of liberty and oblige relevant state bodies to treat these persons in a humane way and with full respect for their personal dignity are also important for the protection of prisoners' physical and mental health.²³

Law on Health Protection defines health protection as an organized and comprehensive activity of the society, the goal of which is to achieve the highest possible level of conservation of individual and family health. It comprises the enforcement of measures necessary for the maintenance and improvement of citizens' health, prevention suppression and diagnosis in the early stage of diseases, injuries, and other health disorders as well as prompt and efficient treatment and rehabilitation.²⁴ The right of health protection is recognized to all citizens of the Republic of Serbia, and to persons with permanent or temporary residence on its territory.²⁵ The accessibility of health protection should be perceived in the context of following principles: accessibility, righteousness, comprehensiveness, continuity, efficiency and constant improvement of health care quality.²⁶ The Law also prescribes that all patients have equal access to health protection without any discrimination based upon financial position, place of residence, type of disease

15 European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg, 26.XI.1987, European Treaty Series, No. 126, text amended according to the provisions of Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) which entered into force on 1 March 2002, <http://www.cpt.coe.int/en/documents/ecpt.htm>, 16.12.2013.

16 Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules, adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies, <https://wcd.coe.int/ViewDoc.jsp?id=955747>, 16.12.2013.

17 Particularly significant are The Second General Report /CPT/Inf (92) 3/, The Seventh General Report /CPT/Inf (97) 10/, The Ninth General Report /CPT/Inf (99) 12/ and the Twelfth General Report /CPT/Inf (2002) 15, <http://www.cpt.coe.int/en/docsannual.htm>, 16.12.2013.

18 Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14, Rome, 4.XI.1950, <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>, 16.12.2013.

19 Konstantinović Vilić, S., Kostić, M. (2005). Evropski standardi za izvršenje krivičnih sankcija, *Pravni život - časopis za pravnu teoriju i praksu*, 54 (9), 888 – 889.

20 Soković, S. (2005). Izvršenje kazne zatvora – relevantni međunarodni pravni standardi. *Pravni život - časopis za pravnu teoriju i praksu*, 54 (9), 714.

21 Paragraph 68, Subparagraph 1, Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 98/2006

22 Paragraph 25

23 Paragraph 28

24 Paragraph 2, Law on Health Protection, Official Gazette of the Republic of Serbia, No. 107/2005, 72/2009, 88/2010, 99/2010, 57/2011, 119/2012 and 45/2013

25 Paragraph 3

26 Paragraphs 19 – 24

or time of access to health service.²⁷ Specific populations of citizens that are considered more prone to the risk of disease for various reasons are enumerated the Law.²⁸ Although there are circumstances suggesting that prisoners could be recognized as a particularly vulnerable group prone to the risk of deterioration of physical and mental health, the Law fails to do so. Instead, their rights and obligations in health protection are regulated by the Law on the Enforcement of Criminal Sanctions²⁹ and Regulation on House Order in Penitentiary Institutions and District Prisons³⁰.

The most important guarantees of prisoners' human rights in the Republic of Serbia, including health protection, are systematized within a separate chapter of Law of the Enforcement of Criminal Sanctions – Chapter Six entitled as „The Position of The Convict“³¹. The Law guarantees this right to all prisoners, in accordance with general legal provisions regulating health protection. If appropriate health protection and medical care cannot be provided within the penitentiary institution the patient must be transferred to the Special Prison Hospital or other suitable institution, whereas a pregnant female prisoner must be transferred to maternity hospital.³² Health Protection Service represents one of the services that may be established within every penitentiary institution.³³ It is in charge of health prevention, treatment of ill prisoners and detainees and supervises hygiene and food and water quality and participates in the creation and implementation of in-prison treatment programs. The Service must include at least one general medical practitioner and one medical technician and provide the services of one psychiatrist. Hospital treatment can also be organized within the prison facility. In that case, medical practitioners and technicians with adequate level of expert knowledge, proper hospital premises and necessary medical supplies, devices, tools and medicaments need to be available³⁴ and the Prison Manager has to take into consideration the suggestions of medical practitioner when deciding upon some issues pertinent to the organization of everyday life and activities of the prisoners.³⁵ Separate premises for ill prisoners must be provided in every penitentiary institution.³⁶

Medical practitioners employed in penitentiary institutions are obliged to: 1) conduct medical examination of all prisoners upon their arrival to prison, after their return from temporary leave and prior to their final release; 2) assess whether a prisoner is physically or mentally ill and determine his working ability whenever it is necessary; 3) promptly conduct medical examination of any prisoner with reported or indicated health problems; 4) on a daily basis conduct medical examinations of prisoners who are ill, who refuse food or water and regularly, at least once in three months, conduct medical examinations of other prisoners; 5) control the accommodation, nutrition, hygiene, sanitary and other conditions relevant to prisoners' health; 6) keep separate records on prisoners' injuries and inform the Prison Manager about any sign or indication that the prisoners are treated in a violent manner and 7) supervise the functioning of prison pharmacy and the work of staff in charge of keeping records, issuing and delivering appropriate therapy. Apart from the aforementioned, the duties and obligations of medical technician pertinent to written reports, expert findings and recommendations that he delivers to the Prison Manager are also significant. These include: 1) delivering periodical reports on prisoners' health condition, 2) reporting any case of harm or deterioration of prisoner's physical or mental health that are the result of prolonged dwelling in prison or of the manner in which the penalty is executed and recommending measures that should be applied in such cases, including interrupting the execution; 3) gives recommendations on the quantity and quality of prisoners' meals; 4) recommends measures to improve the hygiene, sanitary conditions, heating, light and air-circulation in prison premises and 5) delivers findings and recommendations regarding

27 Paragraph 26 Subparagraph 2

28 Paragraph 11, Subparagraph 2, Points 1 -13

29 Law on the Enforcement of Criminal Sanctions

30 Regulation on House Order in Penitentiary Institutions and District Prisons, No. 110-00-6/2010-03 adopted on 27.09.2010, Official Gazette of the Republic of Serbia 72/2010

31 Law on the Enforcement of Criminal Sanctions

32 Paragraph 101

33 Paragraph 18, Subparagraph 1, Point 4

34 Paragraph 23

35 Paragraph 27 Subparagraph 6, Regulation on House Order in Penitentiary Institutions and District Prisons

36 Paragraph 18, Subparagraph 4

necessary physical activities of the prisoners. Prison Manager is obliged to implement all these recommendations without delay.³⁷

A set of more detailed provisions on prisoners' health protection is found in the Regulation on House Order in Penitentiary Institutions and District Prisons³⁸. The Regulation treats right of health protection as one of prisoners' fundamental human rights and obliges the prison administration to provide accommodation in compliance with contemporary medical and health criteria³⁹. Penitentiary institutions are required to provide necessary preconditions for health protection in accordance with the law, including special premises for medical examinations of prisoners and special room for ill prisoners that must be spacious, clean, with natural and artificial light sources, well heated and equipped with appropriate sanitary devices with hot and cold water.⁴⁰ The regulation also prescribes the duties of prisoners pertinent to their health protection, obliging them to undertake measures necessary for protection and maintenance of health and hygiene as well as to obey the instructions of medical practitioners on medical treatment and prevention of contagious diseases.⁴¹

Medical examination of prisoners must be conducted upon their arrival to the institution, or at least within the period of 24 hours after, or without delay upon prisoner's request or if some health troubles have been noted during his reception. Prisoner's personality and personal dignity must be respected during medical examinations and the application of hygiene measures.⁴² A prisoner may demand medical examination, without giving any further explanations on the reasons for his request and security staff members have to make special written notes on that. In emergency cases, every prison staff member has to demand urgent medical help to be provided for the prisoner.⁴³ Medical examination should be conducted only in the presence of medical practitioners and technicians (unless they require the presence of other prison staff members), individually and in the manner which guarantees the respect of prisoner's personality and dignity. Upon prisoner's request, the Prison Manager may allow him to be examined by a special medical technician even if such examination has not been approved by general medical practitioner. In such cases, the prisoner has to cover the expenses of medical examination, unless the Prison Manager decides something else. Medical treatment of prisoners cannot be conducted without their consent. But, if the prisoner seriously endangers his own life or health by refusing to undergo medical therapy, medical measures prescribed by medical practitioner can be applied even without his agreement. Since prisoners' hunger strikes occasionally occur in Serbian prisons⁴⁴, provisions prohibiting coerced feeding are also very important. However if a prisoner seriously endangers his own life or health, measures prescribed by medical practitioner shall be applied.⁴⁵

CURRENT CONDITIONS OF PRISONERS' HEALTH CARE IN SERBIA

The analysis of current legislative acts shows that the Republic of Serbia has got a satisfactory normative framework which provides prisoners with a series of rights and possibilities pertinent to the accomplishment of their health protection in accordance with European and Universal human rights and health care standards. However, a more thorough analysis of reports issued by the Administration for the Enforcement of Criminal Sanctions, the Ombudsperson⁴⁶ and some non-governmental organizations and international entities suggests that the reality is far from satisfactory. These statements refer particularly to the fulfillment of European standards in the field of treating prisoners with HIV/AIDS, prisoners who suffer from mental disorders and substance-abusers.

³⁷ Paragraph 103, Law on the Enforcement of Criminal Sanctions,

³⁸ Paragraph 27 Subparagraph 6, Regulation on House Order in Penitentiary Institutions and District Prisons

³⁹ Paragraphs 14 and 15

⁴⁰ Paragraph 27

⁴¹ Paragraph 31

⁴² Paragraph 11

⁴³ Paragraph 35

⁴⁴ See for example: Official Announcement "Extraordinary Control of the Ombudsperson Deputee in Niš Penitentiary Institution", 06.10.2009., <http://www.ombudsman.rs/index.php/langsr/aktivnosti/saopstenja/617-2009-10-06-08-27-36>, 17.12.2013.

⁴⁵ Paragraph 102, Law on the Enforcement of Criminal Sanctions and Paragraphs 28 and 29, Regulation on House Order in Penitentiary Institutions and District Prisons, 14.

⁴⁶ Batričević, A. (2011). *Zaštitnik građana i poštovanje prava zatvorenika u Republici Srbiji*, *Branič*, 124 (1-2), 135-156

Health protection of persons deprived of liberty is conducted through Health Services of the Administration for the Enforcement of Criminal Sanctions, Special Prison Hospital and, when necessary, ambulances and hospitals within the Ministry of Health. Significant improvements were made when the Agreement between the Ministry of Health and the Ministry of Justice prescribing that the expenses of medical treatments of persons deprived of liberty are to be covered by the Ministry of Health was signed, because it enabled the avoidance of unnecessary and complicated administrative procedures. This agreement also allowed detainees and prisoners to gain access even to the most complex diagnostic procedures, therapies, and surgery interventions under the same conditions that are required for other citizens.⁴⁷ The cooperation between the two Ministries included: active screenings for tuberculosis, voluntary and confidential advising and testing on HIV/AIDS, substance abuse prevention programs and educational programs on spreading blood-transmittable diseases and mammographic examinations. In addition, all penitentiary institutions were provided with substitutive methadone therapy of drug-addicts.⁴⁸

At the moment, the most important issue, detected not only in Serbian prisons but on global level as well, seems to be a great amount of substance abusers among the prison population and a large number of inmates infected with HIV/AIDS or Hepatitis B or C. Within the cooperation between the Ministry of Justice, Global Fund, UNDOC and Serbian prisons, a strategy for combating psychoactive substance addiction and “damage control” programs are implemented, including substitutive methadone therapy and functioning of “drug-free department” in the Special Prison Hospital. Although the establishment of drug free departments was planned in other large penitentiary institutions in our country, financial obstacles and lack of professional staff delayed the accomplishment of that intention.⁴⁹

Although the exact number of HIV infected prisoners cannot be estimated with certainty, it is considered that their percentage is much larger than among the general population. The percentage of HIV infected persons in Ukraine is 10 times larger in the prison population than among other citizens, one third of HIV infected persons in Central Asia are prisoners, whereas in South Africa nearly one half of prison population is HIV positive.⁵⁰ The accurate number of HIV infected prisoners in Serbia cannot be precisely determined since the only available data on this issue are the ones published in the Reports of the Administration for the Enforcement of Criminal Sanctions. It is suspected that the number of HIV infected prisoners is much larger than the one presented in the reports, due to the fact that some of them have not yet shown the symptoms of this disease or been officially registered. Similar can be said about the number of drug addicts, because psychoactive substances’ testing is not obligatory at the moment of arrival to the institution and there are no formal records on drug or alcohol abusers. The presence of virus Hepatitis B and C is also frequent. The number of prisoners infected with HIV and Hepatitis B and C between 2005 and 2012 is presented in Table 1. These are officially registered cases, but, the actual dimensions of the problem could be perceived only if the unregistered ones were added.

Godina	Broj osuđenika zaraženih HIV virusom	Broj osuđenika zaraženih virusom hepatitisa B i C
2005	22	528
2007	27	1784
2008	47	1548
2009	70	2189
2011	60	3331
2012	20	1671

Table 1. The number of prisoners infected with HIV and Hepatitis B and C per year (2005-2012)

47 Joka, D. (Ed.) (2012). *The 2011 Annual Report on the Work of Administration for the Execution of Criminal Sanctions*, Belgrade: Ministry of Justice of the Republic of Serbia – Administration for the Execution of Criminal Sanctions.

48 Draft Strategy of the Development of the System of Execution of Criminal Sentences in the Republic of Serbia in the period between 2013 and 2020, <http://www.mpravde.gov.rs/obavestenje/1561/radna-verzija-strategije-razvoja-sistema-izvršenja-krivičnih-sankcija-2013-2020.php>, 18.12.2013.

49 Joka, D. (Ed.) (2012). *op.cit.*, 14.

50 See: *Health in prisons: Realising the Right to health*, <http://www.penalreform.org>, 19.12.2013.

One of the greatest problems affecting HIV infected prisoners is the lack of access to other institutions, organizations and programs providing assistance and support related to HIV treatment, and prevention. It is necessary to improve their knowledge about the possibilities of treatment and give them information on relevant organizations, associations of persons living with HIV and other institutions and individuals providing services and help for HIV infected persons.⁵¹ One scientific research on the frequency of risk and protective behavioral patterns and the level of sensitivity to HIV and other sexually transmittable diseases among persons serving prison sentence Serbia has confirmed the existence of urgent need to create specific HIV prevention programs designed in accordance with the needs to the prison population. The results of this research show that 1 out of 7 prisoners has experienced intravenous drug intake. Furthermore, 5% of imprisoned intravenous drug abusers admitted that they consumed drug for the first time in prison, whereas 39.5% said that they shared the needle with their inmates at least once. Moreover, 1 out of 5 prisoners had their tattoos made in prison, and 14.7% admitted that they did not use sterilized equipment on that occasion. While serving prison sentence, 16.3% of prisoners had sexual intercourses with irregular sexual partners and slightly more than 20% of prison population is familiar with basic facts on HIV/AIDS. On the other hand, 83.9% of prisoners expressed discriminatory attitude against persons infected with HIV.⁵² Mental health issues of HIV infected prisoners differ from the ones that the rest of the prison population is facing with, due to the complexity of their living situation, their criminal background, frequently dysfunctional families and lack of means to control their problem due to the isolation and specific prison environment. Researchers and medical experts who studied the issue of health care of HIV infected prisoners tend to emphasize that prisoner-s awareness of his own HIV positive status and living with HIV in prison should be perceived in the context of other problems commonly affecting this population, including their social, psychological and medical aspects.⁵³

The 2012 Annual Report on the Work of the Administration for the Enforcement of Criminal Sanctions highlights that prisoners infected with HIV and Hepatitis C can receive adequate therapy at special hospitals for infectious disease within the Ministry of Health under the same conditions as other citizens. In 2011, the Council of Europe evaluated this approach to resolving the issue of prisoners' medical treatment as "an example of good practice". Nevertheless, it is rather concerning that only 23 prisoners were vaccinated against Hepatitis B in 2012 and that only 8 HIV positive prisoners are currently receiving adequate therapy. Even if we assume that the number of HIV infected prisoners in our prisons is minor in comparison to other countries, this problem must not be ignored or neglected because the lack of appropriate and prompt reaction may produce a series of negative repercussions, primarily due to a constant increase in the number of infected persons.⁵⁴ Specific problems related to the presence of HIV in prisons are multi-dimensional and should be observed from at least three aspects: the procedure the prisoner is subject to upon his arrival to the institution and testing that should be conducted therein, the adequacy of current accommodation scheme of infected persons and the organization of their everyday activities, with focus on disease-prevention programs.⁵⁵

When it comes to prisoners' mental health, the Report of the European Committee for the Prevention of Torture and Inhumane or Degrading Treatment or Punishing particularly pointed out that the quality of psychiatric treatments and psychological services delivered in Serbian prisons is rather weak. The Report suggests that a greater amount of attention should be dedicated to psychological, social and educative support for substance-abusers. Namely the treatment of drug addicts in our prisons is comprised solely of the so called methadone therapy, which is provided only for those prisoners who are officially registered as drug abusers upon their arrival to the institution. Therefore, it is highlighted that the treatment of prisoners with psychoactive substance abuse problems should include a combination of preventive policies and programs including medical detoxification, psychological support, rehabilitation and substitution.⁵⁶

51 Iljić, L.J. (2011) Deprivacija sigurnosti i HIV virus kao faktori koja narušavaju sigurnost osuđenika, *Zbornik Instituta za kriminološka i sociološka istraživanja*, 29 (1-2), 109-118.

52 Krstić, M., Terzić, Z., Knežević, T., Ivanović, I., Bjelić, I. (2008) Rizični oblici ponašanja i faktori rizika na HIV među zatvorenicima u Republici Srbiji, *Glasnik Zavoda za zaštitu zdravlja Srbije*, 80 (3), 19-22.

53 Stojanovski, J., Stojanović, M., Petrović, B. (2007) *Mentalno zdravlje i HIV/AIDS u Srbiji, Kvalitativna studija o problemima mentalnog zdravlja osoba koje žive sa HIV-om*, GIP Ekspertski centar za mentalno zdravlje i HIV/AIDS u Srbiji. <http://www.ian.org.rs/sida/publikacije/mentalno%20zdravlje%20i%20HIVAIDS.pdf>, 21.12.2013.

54 Joka, D. (Ed.) (2012). *op.cit.*, 15.

55 Pavlović, M. (2008) Specifični problemi zatvorske populacije zaražene HIV virusom, *Pravni život, Časopis za pravnu teoriju i praksu*, 57(9), 833-843.

56 Izveštaj Vladi Republike Srbije o poseti Evropskog komiteta za sprečavanje mučenja i neljudskog ili ponižavajućeg postupanja ili kažnjavanja (CPT), 1-11.2. 2011., <http://www.cpt.coe.int/documents/srb/2012-17-int-srb.pdf>, 21.12.2013.

CONCLUSION

Health care of persons deprived of liberty is a multi-layered issue, significant from several different aspects. First of all, prisoner's right of adequate health protection is one of their fundamental human rights, implementation of which is directly linked to the principle of humane treatment during the execution of prison sentence⁵⁷. Contemporary concept of custodial sentences is based upon the standpoint that the limitation of liberty combined with prison life conditions already represents a severe punishment, excluding any need for further deprivations. Right of health protection is guaranteed by several international documents that are applied on all citizens without discrimination, but health care and medical treatment of prisoners are also regulated in special international documents dedicated to the protection of their human rights. The fact that around 30 million people per year enter and leave prisons worldwide is a strong argument to treat the issue of health care within penitentiary institutions as an aspect of public health and, give it the attention it deserves.

Since the major purpose of modern criminal sanctions includes re-socialization and social reintegration, the focus of the entire concept of prison sentence is now on the preparation of inmates to become useful and law-abiding community members. One of the preconditions for the accomplishment of that intention is to enable them to find legal and regular sources of income and re-enter the labor market, which cannot be achieved without the respect of their human rights⁵⁸, including appropriate maintenance or even improvement of their physical and mental health. It is scientifically approved that physical and mental suffering causes passivity, resistance and loss of critical attitude on one's own behavior, which means that prison conditions that cause such consequences are in collision with the proclaimed purpose of punishment and even suitable to generate recidivism instead of preventing it.⁵⁹ In that context, adequate living conditions in prisons and providing adequate health protection and medical care of prisoners that would assure preservation and amelioration of their physical and mental well-being should be perceived not only as the embodiment of the principle of humanity but also as a means of crime prevention. So, not only does appropriate health care of prisoners represent a way to protect their individual human rights and interests, but it also has a broader purpose – to enhance the re-socialization of prisoners, increase their chances to reintegrate in the community as its active, responsible and useful members and, as the final result protect the society from crime.

Adequate system of health protection in prisons accompanied with an efficient mechanism of inner and outer control of its functioning is also important for the prevention of another type of crime – torture of prisoners committed by the members of prison staff. Independent health service and medical staff of high personal and professional integrity are supposed to facilitate discovering, proving, preventing and sanctioning the cases of torture i.e. inhumane or degrading treatment of prisoners inside the penitentiary institutions.

Genuine state of health protection in Serbian prisons can be depicted through the reports of the Ombudsperson, the Administration for the Execution of Criminal Sanctions and relevant international organizations. These documents show that there is still a serious gap between normative framework and reality in this field due to overcrowded institutions, limited financial resources, lack of medical equipment and insufficient number of professional medical staff. Although no individual cases of torture have been reported, these reports suggest that general conditions under which prisoners are kept are sometimes so inhumane and degrading that they resemble and can be treated as torture. The number of HIV and Hepatitis B and C infected prisoners should cause concern, particularly if the unregistered cases are taken into considerations. This issue should be given more attention, as well as the problem of psychoactive substance abuse and the lack of a comprehensive approach to the treatment of drug-abusers in prisons. In spite of constant efforts to improve current state regarding the health of prisoners through cooperation with the Ministry of Health, organizing more frequent testing on HIV and Hepatitis B and C,

57 Konstantinović Vilić, S., Kostić, M. (2011). *Sistem izvršenja krivičnih sankcija i penalni tretman u Srbiji*, Niš: Sven, 32 – 34.

58 See: Batrićević, A. (2011). Zaštitnik građana i poštovanje prava zatvorenika u Republici Srbiji, *Branič*, 124 (1-2), 135-156.

59 Soković, S. (2005). Izvršenje kazne zatvora – relevantni međunarodni pravni standardi. *Pravni život – časopis za pravnu teoriju i praksu*, 54 (9), 714.

education of prisoners on risks of sexually transmittable diseases, establishment of „drug free departments“, investing in some parts of equipment etc., the actual state of prisoners' health and standards regarding medical care of prisoners in Serbia are far away from those prescribed and considered acceptable by International documents and our national legal framework. The improvement of current situation in this field would require a holistic approach starting from the allocation of financial resources, organization of inner and outer control of functioning of health care services within the penitentiary institutions, education on the importance of health protection and prevention and raising awareness on the contribution of adequate health care of prisoners to crime suppression and prevention of recidivism.

REFERENCES

1. Batrićević, A. (2011). Zaštitnik građana i poštovanje prava zatvorenika u Republici Srbiji, *Branič*, 124 (1-2), 135-156.
2. Constitution of the World Health Organization, (Off. Rec. Wld Hlth Org., 2, 100), <http://apps.who.int/gb/bd/PDF/bd47/EN/constitution-en.pdf>, 16.12.2013
3. Constitution of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 98/2006
4. Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, adopted and opened for signature, ratification and accession by General Assembly resolution 39/46 of 10 December 1984, entry into force 26 June 1987, in accordance with article 27 (1), <http://www.ohchr.org/EN/ProfessionalInterest/Pages/CAT.aspx>, 16.12.2013
5. Convention for the Protection of Human Rights and Fundamental Freedoms as amended by Protocols No. 11 and No. 14, Rome, 4.XI.1950, <http://conventions.coe.int/Treaty/en/Treaties/Html/005.htm>, 16.12.2013
6. Criminal Code of the Republic of Serbia, Official Gazette of the Republic of Serbia, No. 85/2005, 88/2005, 107/2005, 72/2009 and 111/2009
7. Draft Strategy of the Development of the System of Execution of Criminal Sentences in the Republic of Serbia in the period between 2013 and 2020, <http://www.mpravde.gov.rs/obavestjenje/1561/radna-verzija-strategije-razvoja-sistema-izvršenja-krivичnih-sankcija-2013-2020.php>, 18.12.2013.
8. European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, Strasbourg, 26.XI.1987, European Treaty Series, No. 126, text amended according to the provisions of Protocols No. 1 (ETS No. 151) and No. 2 (ETS No. 152) which entered into force on 1 March 2002, <http://www.cpt.coe.int/en/documents/ecpt.htm>, 16.12.2013.
9. *Health in prisons: Realising the Right to health*, <http://www.penalreform.org>, 19.12.2013.
10. Ilijić, L.J. (2011). Deprivacija sigurnosti i HIV virus kao faktori koja narušavaju sigurnost osuđenika, *Zbornik Instituta za kriminološka i sociološka istraživanja*, 29 (1-2), 109-118.
11. International Covenant on Economic, Social and Cultural Rights Adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966, entry into force 3 January 1976, in accordance with article 27, <http://www.ohchr.org/Documents/ProfessionalInterest/cescr.pdf>, 16.12.2013.
12. Izveštaj Vladi Republike Srbije o poseti Evropskog komiteta za sprečavanje mučenja i neljudskog ili ponižavajućeg postupanja ili kažnjavanja (CPT), 1-11.2. 2011., www.cpt.coe.int/documents/srb/2012-17-int-srb.pdf, 21.12.2013.
13. Joka, D. (Ed.) (2012). *The 2011 Annual Report on the Work of Administration for the Execution of Criminal Sanctions*, Belgrade: Ministry of Justice of the Republic of Serbia – Administration for the Execution of Criminal Sanctions.
14. Konstantinović Vilić, S., Kostić, M. (2006). *Penologija*. Niš: Sven

15. Konstantinović Vilić, S., Kostić, M. (2005). Evropski standardi za izvršenje krivičnih sankcija, *Pravni život - časopis za pravnu teoriju i praksu*, 54 (9), 887-902.
16. Konstantinović Vilić, S., Kostić, M. (2011). *Sistem izvršenja krivičnih sankcija i penalni tretman u Srbiji*, Niš: Sven
17. Krstić, M., Terzić, Z., Knežević, T., Ivanović, I., Bjelić, I. (2008). Rizični oblici ponašanja i faktori rizika na HIV među zatvorenicima u Republici Srbiji, *Glasnik Zavoda za zaštitu zdravlja Srbije*, 80 (3)
18. Law on Health Protection, Official Gazette of the Republic of Serbia, No. 107/2005, 72/2009, 88/2010, 99/2010, 57/2011, 119/2012 and 45/2013
19. Law on the Enforcement of Criminal Sanctions, Official Gazette of the Republic of Serbia, No. 85/2005, 72/2009 and 31/2011
20. Official Announcement "Extraordinary Control of the Ombudsperson Deputee in Niš Penitentiary Institution", 06.10.2009., <http://www.ombudsman.rs/index.php/langsr/aktivnosti/saopstenja/617-2009-10-06-08-27-36>, 17.12.2013.
21. Paunović, M., Krivokapić, B., Krstić, I. (2007). *Osnovi međunarodnih ljudskih prava*. Beograd: Megatrend Univerzitet.
22. Pavlović, M. (2008) Specifični problemi zatvorske populacije zaražene HIV virusom, *Pravni život, Časopis za pravnu teoriju i praksu*, 57(9), 833-843.
23. Radišić, J. (2008). *Medicinsko pravo*. Beograd: Pravni fakultet Univerziteta Union, Nomos,
24. Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules, adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies, <https://wcd.coe.int/ViewDoc.jsp?id=955747>, 16.12.2013.
25. Regulation on House Order in Penitentiary Institutions and District Prisons, No. 110-00-6/2010-03 adopted on 27.09.2010, Official Gazette of the Republic of Serbia 72/2010
26. Revised European Social Charter, Council of Europe, Strasbourg, 3.5.1996, European Treaty Series, No. 163., <http://conventions.coe.int/Treaty/Commun/QueVoulezVous.asp?NT=163&CM=8&CL=ENG>, 16.12.2013.
27. Soković, S. (2002). Zaštita i ograničavanje prava osuđenih lica. *Pravni život - časopis za pravnu teoriju i praksu*, 51 (9), 527-541.
28. Soković, S. (2005). Izvršenje kazne zatvora - relevantni međunarodni pravni standardi. *Pravni život - časopis za pravnu teoriju i praksu*, 54 (9), 887-902
29. Standard Minimum Rules for the Treatment of Prisoners, adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977, <http://www.ohchr.org/EN/ProfessionalInterest/Pages/TreatmentOfPrisoners.aspx>, 16.12.2013.
30. Stojanovski, J., Stojanović, M., Petrović, B. (2007) *Mentalno zdravlje i HIV/AIDS u Srbiji, Kvalitativna studija o problemima mentalnog zdravlja osoba koje žive sa HIV-om*, GIP Ekspertski centar za mentalno zdravlje i HIV/AIDS u Srbiji. <http://www.ian.org.rs/sida/publikacije/mentalno%20zdravlje%20i%20HIVAIDS.pdf>, 21.12.2013.
31. The Universal Declaration of Human Rights, General Assembly Resolution 217 A (III), <http://www.ohchr.org/en/udhr/pages/introduction.aspx>, 14.09.2013.