

PENITENTIARY SYSTEMS AND THE COVID-19 PANDEMIC: PRISON POPULATION IN THE PERIOD OF THE 'NEW REALITY'

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Abstract

The appearance of the SARS-CoV-2 virus and the spread of the infectious disease COVID-19 led to the declaration of a pandemic by the WHO in early 2020, and epidemics at the level of nation states. The consequences of the enormous speed of the spread of the virus and the consequences for human health have influenced significant changes in all spheres of social life. The period of 'new reality', as the time in which we live is called, is characterized by numerous limitations and restrictions of "normal life flows and activities" in an attempt to prevent or slow down the spread of the virus. Established restrictions on fundamental rights and freedoms vary in scope and duration depending on the epidemiological situation in a particular country. Pandemic trends are unpredictable, so the reactions of states at the normative level are usually forced. The authors devoted their work to the prison population as one of the vulnerable groups during the pandemic, the impact of COVID-19 on the functioning of prison systems, the normative aspect of prison health protection at the global level, comparative trends in virus infection and prevention in prisons, and especially restricting the rights of convicts in the Serbian penitentiary system during the pandemic.

Key words: penitentiary system, pandemic, covid-19, prison population.

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ПЕНИТЕНЦИЈАРНИ СИСТЕМИ И ПАНДЕМИЈА КОВИД-19: ЗАТВОРСКА ПОПУЛАЦИЈА У ВРЕМЕНУ 'НОВЕ РЕАЛНОСТИ'

Апстракт

Појава вируса SARS-CoV-2 и ширење заразне болести КОВИД-19 довеле су до проглашења пандемије од стране СЗО почетком 2020. године и епидемија на нивоу националних држава. Последице енормне брзине ширења вируса и последице по људско здравље утицале су на значајне промене у свим сферама друштвеног живота. Период 'нове реалности', како се назива време у којем живимо, карактеришу бројна ограничења и рестрикције "уобичајених животних токова и активности" у покушају да се ширење вируса спречи или успори. Успостављена ограничења основних права и слобода мењају обим и трајање у зависности од епидемиолошке ситуације у одређеној држави. Промене у нормативној сфери су брзе и неконзистентне, често угрожавају принципе правне сигурности и једнакости грађана пред законом. Пандемијски трендови су непредвидиви, стога су и реакције држава на нормативном нивоу најчешће изнуђене. Аутори су свој рад посветили затворској популацији као једној од рањивих група у време пандемије, утицају COVID-19 на функционисање затворских система, нормативном аспекту здравствене заштите затворске популације на глобалном нивоу, упоредним трендовима заражавања и превенције ширења вируса затвореника, а посебно ограничавању права осуђених лица у српском пенитенцијарном систему за време пандемије.

Кључне речи: пенитенцијарни систем, пандемија, ковид-19, затворска популација.

INTRODUCTION

The appearance of the SARS-CoV-2 virus in late 2019 in China and the rate of its transmission to populations around the world, almost unprecedented in human history, led to the proclamation of the COVID-19 pandemic globally by the World Health Organization¹ and epidemics at the national level at the beginning of 2020. Although very little was known about the virus after its appearance (mode of transmission, treatment protocols, consequences, long-term consequences, mortality rate, etc.), the fear of accelerated spreading and potential consequences for individuals and society as a whole led almost all countries in the world to change the normative sphere and introduce numerous prohibitions and restrictions on basic human rights and freedoms.

Consequently, as a result of changes in the normative sphere and, to a greater or lesser extent, unsuccessful attempts to restrain the spread of the consequences of COVID-19 in the general population, the freedom

¹ WHO Director-General's media briefing on COVID-19 - 11 March 2020: <https://www.who.int/director-general/speeches/detail/who-director-general-s-opening-remarks-at-the-media-briefing-on-covid-19---11-march-2020>, Retrieved August 15th 2021.

and basic rights of citizens have been restricted. The period in which we live, due to the extent of deprived or limited rights and freedoms, is often called the period of 'new normality' or 'new reality'. By not accepting the term 'new normality' as a category of permanent character, the period of 'new reality' can be accepted as a notion of temporally limited duration. The period of 'new reality' means the time when, in order to prevent the spreading of a COVID-19, the scope of fundamental rights and freedoms is limited and various forms of prohibitions are introduced (from a complete ban on movement to restrictions on movement conditioned by the possession of a green passport (evidence that the person has not been infected or has been vaccinated)).

However, deprivation or restriction of rights, in addition to the general population, additionally adversely affects other vulnerable categories of the population, especially health-endangered or chronic patients. Certainly, persons deprived of their liberty may be particularly affected by the additional deprivation of certain rights in prisons during the pandemic. The authors analyze the position of the prison population as one of the vulnerable groups during the pandemic and the impact of COVID-19 on the functioning of prison systems, the normative aspect of prison health protection, comparative trends in virus infection in prisons, especially, restricting the rights of convicts in Serbian penitentiary system during the pandemic.

PRISON POPULATION IN A GLOBAL PERSPECTIVE AND THE COVID-19 PANDEMIC

Prison institutions are key settings for communicable diseases due to higher prevalence of risk factors for infection, as well as environmental factors in prison such as unavoidable close contact, overcrowding, poor ventilation and limited access to healthcare services, compared to community settings. Viruses can be transmitted between prisoners, staff and visitors.

When it comes to numbers and prison population globally, the twelfth edition of the World Prison Population List gives details of the number of prisoners held in 223 prison systems in independent countries and dependent territories. It shows that more than 10.74 million people are held in penal institutions throughout the world, either as pre-trial detainees or remand prisoners, or having been convicted and sentenced, in September 2018. There are more than 2.1 million prisoners in the United States of America, 1.65 million in China, 690,000 in Brazil, 583,000 in the Russian Federation, 420,000 in India, 364,000 in Thailand, 249,000 in Indonesia, 233,000 in Turkey, 230,000 in Iran, 204,000 in Mexico and 188,000 in the Philippines and they are presenting the penitentiary systems with biggest prison population. The countries with the highest prison

population rate – that is, the number of prisoners per 100,000 of the national population – are the United States (655 per 100,000), followed by El Salvador (604), Turkmenistan (552), U.S. Virgin Islands (542), Thailand (526), Cuba (510), Maldives (499), Rwanda (464), Bahamas (438), Seychelles (437), Grenada (435), Russian Federation (402) (Walmsley, 2018: 1-2).

According to the same source, the Republic of Serbia had a prison population of 10,807 people, i.e. population rate of 154. According to the data of the Council of Europe Annual Penal Statistic, as of January 31st 2020 the total prison population in the Republic of Serbia was 11,077 (Aebi, Tiago, 2020: 73). Prison overcrowding index (Grujić, Milić, 2016: 286-295) was 107.3.

It is easy to conclude that penitentiary systems with the largest prison population are, at the same time, systems in which there are the greatest risks of spreading the virus, i.e. the biggest problems in preventing COVID-19 infections can arise. In any case, 11 million people deprived of their liberty represent a vulnerable population that needs additional health protection during pandemic circumstances.

*The normative aspect of protection
of the prison population during the pandemic*

Immediately after the outbreak of the virus in Europe, WHO/Europe published a special interim guidance called Preparedness, prevention and control of COVID-19 in prisons and other places of detention,² which in the introductory remarks indicates that:

“people deprived of their liberty, such as people in prisons and other places of detention are likely to be more vulnerable to the coronavirus disease (COVID-19) outbreak than the general population because of the confined conditions in which they live together for prolonged periods of time. Moreover, experience shows that prisons, jails and similar settings where people are gathered in close proximity may act as a source of infection, amplification and spread of infectious diseases within and beyond prisons. Prison health is therefore widely considered as public health. The response to COVID-19 in prisons and other places of detention is particularly challenging, requiring a whole-of-government and whole-of-society approach.”

² WHO/Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention

<https://apps.who.int/iris/bitstream/handle/10665/336525/WHO-EURO-2020-1405-41155-55954-eng.pdf?sequence=1&isAllowed=y>, Retrieved August 15th 2021.

The document provided scope and objectives, virus pathogen characteristics, signs and symptoms, way of transmission, planning and leveling the risk, training and education, definitions, preventing measures, assessing suspected case of COVID-19 and case management. The guidance on how to deal with COVID-19 in prisons by WHO/Europe were updated on February 8th 2021.³

United Nations Office for Drugs and Crime published a paper on March 31st 2020 on COVID-19 preparedness and responses in prisons in which it is stated, inter alia, that “by definition, prisoners live, work, eat (and often sleep) in close proximity within strictly restricted areas... The systemic neglect of prisons and other places of detention in many countries has resulted in inadequate resources, management, oversight and accountability mechanisms, including ill-equipped personnel and limited linkages to public health systems... cramped accommodation areas, poor hygiene, ventilation and nutrition as well as insufficient health-care services in many prison systems will equally undermine infection control measures and thus significantly increase the risk for infection, amplification and spread of COVID-19” as well as that “preparedness, prevention and response measures in custodial settings should be designed and implemented in line with dedicated guidance developed by the WHO.”⁴

European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) issued on March 20 2020 Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic⁵ in which, inter alia, noted that “coronavirus disease (Covid-19) pandemic has created extraordinary challenges for the authorities of all member States of the Council of Europe. There are specific and intense challenges for staff working in various places of deprivation of liberty, including police detention facilities, penitentiary institutions, immigration detention centers, psychiatric hospitals and social care homes, as well as in various newly established facilities/zones where persons are placed in quarantine”. Document provides ten principles that should be applied by

³ WHO/Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention Interim guidance 8 February 2021: <https://apps.who.int/iris/bitstream/handle/10665/339830/WHO-EURO-2021-1405-41155-57257-eng.pdf?sequence=1&isAllowed=y>, Retrieved August 15th 2021.

⁴ United Nations Office for Drugs and Crime, Position paper on COVID-19 preparedness and responses in prisons: https://www.unodc.org/documents/justice-and-prison-reform/UNODC_Position_paper_COVID-19_in_prisons.pdf, Retrieved August 15th 2021.

⁵ CPT Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (Covid-19) pandemic, CPT/Inf(2020)13: <https://rm.coe.int/16809cfa4b>, Retrieved August 15th 2021.

all relevant authorities responsible for persons deprived of their liberty within the Council of Europe area.

In addition to the basic international documents related to the functioning of penitentiary systems, in all countries, i.e. prison administrations, issued special regulations on the manner of dealing with the pandemic.⁶

*Brief account on prison population world-wide
during the pandemic period*

From the beginning of the pandemic, it was clear that densely packed prisons and jails – the result of decades of mass incarceration in the U.S. – offered ideal conditions for the transmission of the coronavirus.⁷ Federal Bureau of Prison (BOP) in January 2020 began planning for its COVID-19 response. Guidance memos were issued from Central Office, including guidance sent by the BOP Medical Director to all field clinical personnel. The guidance described screening best practices, provided inmate and staff screening tools, and CDC best practices/flyers as to preventing the spread of the disease.⁸ In November 2020, BOP Modified Operations in order to mitigate the spread of COVID-19.⁹

Anyway, in the COVID-19 pandemic's first year, "US prison populations had infection rates five to six times higher than in free-living populations, with mortality rates two to three times higher. Overcrowded congregate living spaces, inadequate testing, lack of personal protective equipment and adequate sanitation, mistrust of medical personnel, and policies that disincentivize symptom reporting by people who are incarcerated all increase outbreak risks in US prisons" (Ryckman, Chin, et al., 2021: 1).

⁶ For example, European Organization of Prison and Correctional Services issued first report on European prison services' responses to COVID-19 crisis on March 30th 2020, latest report on November 16th 2020. The latest report concludes that "the steep increase in the community transmission during the second wave has also had negative implications for the prison system. The number of infected prisoners and staff members is rapidly growing in a number of countries. It is noticeable that some countries, especially in the Eastern European region, where no infections occurred in prisons during the first wave, are now reporting substantial numbers of infections": <https://www.euopris.org/covid-19-prevention-measures-in-european-prisons/>, Retrieved August 15th 2021.

⁷ Prison Policy Initiative, Covid-19 and the Criminal Justice System, <https://www.prisonpolicy.org/virus/>, Retrieved August 15th 2021.

⁸ Federal Bureau of Prison (BOP) COVID-19 Response https://www.bop.gov/coronavirus/overview.jsp#bop_covid-19_response, Retrieved August 15th 2021.

⁹ BOP Modified Operations: https://www.bop.gov/coronavirus/covid19_status.jsp, Retrieved August 15th 2021.

On September 1st 2021, there was the total of 5,223,451 incarcerated tested, from which 418,975 were tested positive. The total of 2,573 incarcerated deaths were recorded. Data shows 105,279 prison-staff positive, but also 183 staff member deaths. On the same date 476,825 incarcerated people received at least one vaccine dose, and 107,893 prison staff received at least one vaccine dose.¹⁰

In Europe the situation is not significantly different. For example, in the UK 17,595 prisoners or children in custody have tested positive for COVID-19 since the start of the pandemic, across 127 establishments, almost all of whom were adults. Of the 208 deaths, 179 were suspected or confirmed to be caused by COVID-19, 123 were prisoners and 56 were supervised individuals. There were 623 new confirmed prisoner and children cases only in July 2021, which is almost seven times more new cases than the 90 positive test results in June 2021. According to the Ministry of Justice, as of May 14 a total of 25,655 prisoners in England had received the first dose of the coronavirus vaccine. Out of the total English prison population of 73,045, it means 35% of prisoners were protected.¹¹

COVID-19 has had significant impacts on prisons in Latin America, where levels of overcrowding are well above the global average. Almost all prisons in the region have more prisoners than their allowed capacity, and in some cases, overcrowding is above 200%. Data shows that prison populations have doubled in the last fifteen years in most countries in Latin America. Prisons in the region are, clearly, places where COVID-19 can easily spread. This explains the high number of COVID-19 cases in Latin American prisons. Specifically, the data shows that by August, there had been at least, 138,522 cases, and 1,504 deaths in Latin American prisons. By the first week of August, Brazil had already recorded over 20,000 infected cases, Mexico over 2,000, Central America over 6,000; and Argentina, Chile and Uruguay had recorded 4,000 cases overall. In Mexico, inmates are 2.3 times more likely to die from COVID-19 than regular citizens. Moreover, all of these numbers are underreported, as the lack of information and transparency is a serious issue in the region.¹²

¹⁰ COVID Prison Project, Nacional COVID-19 Statistic: <https://covidprisonproject.com/data/national-overview/>, Retrieved September 1th 2021.

¹¹ UK Ministry of Justice, HM Prison and Probation Service COVID-19 Official Statistics, Data to 31 July 2021: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1010458/HMPPS_COVID19_Jul21_Pub_final.pdf, Retrieved August 15th 2021.

¹² COVID-19 and prisons in Latin America, <https://www.fairtrials.org/news/commentary-covid-19-and-prisons-latin-america>, Retrieved August 15th 2021.

Currently, in relation to the vaccination process, as a form of prisoner protection, in Spain more than 84% of prisoners are fully vaccinated against COVID-19 and another 13% have received their first dose. In Poland, 74% of prisoners have been vaccinated with at least one dose. In Finland, Ireland and Sweden, vaccination coverage among prisoners was reported as 34.4%, 43.7% and 59.1%, respectively.¹³ In addition to these positive examples, there are countries where there are no such high vaccination rates for the prison population. The biggest problem in the process of collective immunization of prison population remains the unequal availability of vaccines in different geographical areas due to cost and market availability.

SERBIAN PENITENTIARY SYSTEM IN THE COVID-19 PANDEMIC

The Republic of Serbia has more than thirty penitentiaries, which house persons deprived of their liberty on various legal grounds. These are persons who have a certain legal status in the penitentiary (convicts, misdemeanor convicts or detainees). Certainly, persons who are serving a sentence of juvenile imprisonment, as well as persons who are serving an educational measure remand to a correctional facility, are considered persons deprived of their liberty. Furthermore, persons who are undergoing security measures, compulsory psychiatric treatment and keeping in a health institution are also persons deprived of liberty. Also, as a rule, these are all other persons who are deprived of liberty according to a certain legal basis. The position of persons deprived of their liberty differs precisely with regard to the legal status they have in the penitentiary institution (Milić, 2020: 89, 90). Those sentenced to life imprisonment which was introduced into the Serbian criminal legislation in 2019 (Grujić, 2019: 1111), have recently, from 2020, been part of the convict community.

According to World Prison Population list in 2018, the Republic of Serbia had a prison population of 10,807 people, i.e. population rate of 154. According to the data of the Council of Europe Annual Penal Statistic, as of January 31st 2020, the total prison population in Republic of Serbia was 11,077 (Aebi, Tiago, 2020: 73). Prison overcrowding index (Grujić, Milić, 2016: 286-295)¹⁴ by this source was 107.3.

¹³ WHO/Europe Rates of COVID-19 vaccination in prisons:

<https://www.euro.who.int/en/health-topics/health-determinants/prisons-and-health/news/news/2021/7/whoeurope-shows-high-rates-of-covid-19-vaccination-in-prisons>, Retrieved September 1th 2021

¹⁴ Ministry of justice official data on “estimated” prison capacity of 9,000 prisoners in Republic of Serbia, the occupancy rate of prison overcrowding was 120 in year 2009, 125 in 2010, 123 in 2011, 114 in 2012 and 111 in 2013. However, if we accept the assessment of the CPT of 6,500 prisoners, the occupancy rate was 166 in 2009, 172 in

The position of persons deprived of their liberty is regulated by the Law on Execution of Criminal Sanctions (ZIKS),¹⁵ Law on Execution of Imprisonment for criminal offences of organized crime,¹⁶ Law on Juvenile Criminal Offenders and Criminal Protection of Juveniles,¹⁷ other laws and numerous bylaws. All national regulations are fully in line with the most important international sources in the field of rights and protection of persons deprived of their liberty in prison institutions, primarily with the Standard Minimum Rules of the United Nations on the treatment prisoners - Nelson Mandela's rules (United Nations General Assembly A/RES/70/175 adopted on 17 December 2015)¹⁸ and European Prison Rules of the Council of Europe (Recommendation Rec (2006)2 of the Committee of Ministers to member states on the European Prison Rules).¹⁹

Shortly after the proclamation of the pandemic caused by the spread of COVID-19 by the WHO, the Republic of Serbia issued the order to declare an epidemic,²⁰ a state of emergency was declared on March 15th and lasted until May 6th 2020.²¹ In a short period of time, a large number of regulations were passed restricting or abolishing certain rights and freedoms of citizens, and until present time more than one hundred acts were issued concerning the COVID-19 pandemic.²²

2010, 170 in 2011, 157 in 2012 and 154 in 2013 (!). That means that the official data show, in the five consecutive years, the occupancy rate of a 25% above the capacity decreased to 11%, which can be characterized as "acceptable", while unofficial data indicate that the prison overcrowding rate is far above the European states with highest rates.

¹⁵ "Official Gazette of the Republic of Serbia" no. 55/2014 and 35/2019.

¹⁶ "Official Gazette of the Republic of Serbia" no. 72/2009 and 101/2010.

¹⁷ "Official Gazette of the Republic of Serbia" no. 85/2005.

¹⁸ Originally adopted by the First UN Congress on the Prevention of Crime and the Treatment of Offenders in 1955, constitute the universally acknowledged minimum standards for the management of prison facilities and the treatment of prisoners, and have been of tremendous value and influence in the development of prison laws, policies and practices in Member States all over the world. 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.

¹⁹ Adopted by the Committee of Ministers on 11 January 2006 at the 952nd meeting of the Ministers' Deputies. First version of European Prison rules, Council of Europe Committee of Ministers Recommendation No. R(87)3, was adopted by Committee of Ministers on 12 February 1987 at the 404th meeting of the Ministers' Deputies.

²⁰ Order on the Declaration of the COVID-19 infectious disease epidemic, "Official Gazette of the Republic of Serbia" no. 37/2020.

²¹ Decision on suspension of the state of emergency, "Official Gazette of the Republic of Serbia" no. 65/2020.

²² All documents and acts can be found on: <https://www.paragraf.rs/svi-propisi-uputstva-zasprecanje-sirenja-korona-virusa-covid-19.html>, Retrieved August 15th 2021.

However, despite the large number of documents, no act has been passed regarding the position of persons deprived of their liberty in penitentiary institutions. Persons deprived of their liberty were undoubtedly deprived of numerous rights guaranteed by law, but no official act of the Government during the pandemic was available to the public.

It can be indirectly concluded that based on government decrees, the Director of the Administration for Execution of Criminal Sanctions passed restrictive "new prison regulations" that limit or abolish certain rights of prisoners prescribed by law, but such acts have never been made public. Such restrictions and prohibitions, as well as their duration, have in certain cases been communicated through the media or published on the websites of local bar associations. (Milić, 2020: 91, 92).

It is unacceptable that at the time of the largest recorded pandemic in the world, decisions concerning the population of over 11,000 people who are otherwise deprived of their liberty and limited in scope of basic rights and "hidden" from the public eye, are inaccessible.

In the period of additional endangerment of the prison population due to the spread of the virus in penitentiary institutions, the measures and restrictions of the rights of persons deprived of their liberty, prescribed by the law, can only be concluded indirectly. The main restrictions in the scope of the rights of the prison population referred to the abolition or restriction of the right to visits, extended rights exercised outside prison facilities, but also the rights considering position of the incarcerated in the institution in case of suspicion of infection or the onset of symptoms of COVID-19.

We assume that the greatest restrictions and prohibitions were in force during the declared state of emergency in the period between March 15 and May 6, 2021. In the period after that, having in mind the changing epidemiological situation, it is to be assumed that during periods of minimal spread of the infection, restrictions and prohibitions were repealed.

Suspended rights of the incarcerated in the period of state of emergency

Within the guaranteed rights of convicted persons, all persons serving a prison sentence in penitentiary institutions have the right to visit as one of their key rights. According to the provisions of the Law on Execution of Criminal Sanctions, a convict has the right to receive a visit from their spouse, children, parents, adoptive parents and adoptive children and other relatives in the direct line and in the collateral line up to the fourth degree of blood or marriage relations, as well as foster parents and guardians. Manager of the prison institution may approve visits of other persons to the convict (Article 90 ZIKS).

According to Article 94 of the ZIKS, convict have the right of visit in a separate room once in two months, in order to stay with their spouse,

children or other close persons for three hours in special premises of the institution.

Also, the convict has the right to be visited by a defense counsel or an attorney who represents him or when he has invited them to give power of representation (Article 91 ZIKS).

Visits to foreign citizens are prescribed by Article 92 ZIKS which stipulates that a foreign citizen has the right of visit the diplomatic and consular representative of the country of which they are a citizen, i.e. the state that protects their interests, and convicts whose interests are not protected by any state have the right of visit by competent bodies and organizations of the Republic of Serbia and competent international organizations. The convict gives written consent to the visit.

All rights of visit had been suspended.

Within the extended rights or benefits of a convicted person, the ZIKS envisages a corpus of rights aimed at maintaining contacts with the outside world and simplifying the process of social reintegration of convicted persons. Extended rights do not belong to all categories of convicted persons, nor can they be used to the same extent. During the state of emergency, convicted persons were prevented from using numerous special benefits or rights.

Part of the extended rights or benefits again refers to visits to a convicted person. Convicted persons are prevented from exercising the following rights: extended right to the number of visits; extended right to a circle of persons who can visit the convict (further relatives, friends and others); extended right to receive unsupervised visits to the visiting premises; extended right to receive visits in special premises; extended right to receive visits outside the institution (Article 129 ZIKS).

In addition to the above, convicted persons could not use the following benefits, provided by the same article: free exit to the city (outside the prison facilities); visiting families and relatives on weekends and holidays; award leave from the institute for up to seven days during the year; and the use of annual leave outside the institution. These benefits are not prescribed to all convicts, nor to the same extent.²³

If the convict exercised the right to work outside the prison (Article 101 ZIKS) or at his workplace before being sent to serve the prison sentence (Article 102 and 102a ZIKS), these rights could not be exercised

²³ Thus, for example, a convict who was assigned to group A1 received extended rights and benefits that are used outside the institution, as follows: 1) reception of visits outside the institution for a period of eight hours - twice a month; 2) free exit to the city once a month for eight hours; 3) visits to family and relatives on weekends and holidays in the total duration of up to 120 hours per month, and in the month in which the non-working state or religious holiday is up to 144 hours.

during the state of emergency, but also in the subsequent period in accordance with the epidemiological situation.

The issue of exercising the right to health care (Article 113-118 ZIKS) for the prison population is particularly problematic, given the limited information available. Pandemic protocols and priorities have indisputably reduced the possibilities of providing health care to sick convicts. The manner of achieving health care for convicts who are infected in the institution, the isolation of suspicious or infected persons must certainly be the subject of a special study. The issue of protocols in relation to violations of the fundamental rights of convicted persons must also be the subject of special attention. Therefore, the issue of the right to health care of convicted persons during a pandemic remains open.

At the moment, we are in the fourth wave of mass spread of the infection in the Republic of Serbia. Bearing in mind that the end of the pandemic is not in sight, despite the mass vaccination of the population, it is unknown what can be expected in the period ahead. Additional prohibitions and restrictions on the rights of the prison population without publicly available documents and timely information are inadmissible.

CONCLUSION

The pandemic circumstances in which we live, and the cycles (waves) of the spread of SARS-CoV-2, i.e. the consequences of COVID-19 infection on human health, leave indelible consequences on the functioning of all segments of modern states. The period of 'new reality' is a time of uncertainty, cyclical restriction of basic human rights and freedoms and their re-establishment, legitimized by protecting the health of the individual, reducing mortality, functioning health systems, economy, society and the state as a whole. No social group is exempt from restrictions and "imposed" rules in a pandemic. Rules change frequently, solutions are inconsistent and often confusing for citizens.

The authors tried, without sufficient time distance and available information and data, to point out the vulnerability of the prison population during the pandemic because, in case of spreading the infection within prison institutions, there is no possibility of "physical distancing", taking adequate prevention measures or adequate treatment of convicts. Isolation of a convict suspected or proven to be positive for the virus in prisons becomes a measure of solitary confinement. Isolation due to the virus can take a very long time given the size of the prison population and prison overcrowding. Without isolating the infected or sick, the entire prison population can be infected. That is why prisoners are a vulnerable group at the time of the pandemic.

On the other hand, the authors wanted to point out the fact that the legally defined basic (or extended) rights of convicted persons are signifi-

cantly limited at the time of the pandemic. During the state of emergency in the Republic of Serbia, all the rights of convicts related to receiving visits or leaving the prison were suspended. The legal basis for restricting legally defined rights is not publicly available. Indirectly, the manner of deprivation or restriction of rights is assumed. Serbia is no exception.

In the end, the importance of normative activities at the international level in relation to persons in penitentiary institutions must not be left out, because they are, as rules, guidelines, protocols, the basis for dealing with the prison population during the COVID-19 pandemic. They must also be the basis of our prison system.

Transparency of treatment of the prison population during the epidemic, availability of acts restricting or revoking the rights of convicts, prevention measures, adequate treatment protocols and availability of the health care system must be the basis of their future position of persons deprived of their liberty. The pandemic continues.

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ПЕНИТЕНЦИЈАРНИ СИСТЕМИ И ПАНДЕМИЈА КОВИД-19: ЗАТВОРСКА ПОПУЛАЦИЈА У ВРЕМЕНУ 'НОВЕ РЕАЛНОСТИ'

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Резиме

Појава вируса SARS-CoV-2 крајем 2019. године у Кини и брзина преношења, готово незабележених размера у људској историји на популацију у читавом свету, довела је до проглашења пандемије КОВИД-19 на глобалном нивоу од стране Светске здравствене организације и епидемија на нивоу националних држава. Иако се након појављивања вируса о њему јако мало знало (начин преношења, протоколи лечења, последице, дугорочне последице, стопа морталитета и др.), из страха од убрзаног ширења и потенцијалних последица по појединце и друштво у целини, од почетка 2020. године готово све државе света су изменама у нормативној сфери и увођењем бројних забрана и ограничавања основних људских права и слобода покушале да зауставе или успоре ширење вируса. Консеквентно изменама у нормативној сфери и, у већој или мањој мери, неуспелим покушајима "обуздавања" ширења последица КОВИД-19 у општој популацији, дошло је до ограничавања слободe и основних права грађана. Период у коме живимо, због обима одузетих или ограничених права и слобода, често се назива периодом 'нове нормалности' или 'нове реалности'. Не прихватајући термин 'нова нормалност' као категорију трајног карактера, период 'нове реалности' може се прихватити као појам темпорално ограниченог трајања. Период 'нове реалности' означава време у коме се, зарад спречавања ширења пандемије, ограничава обим основних права и слобода и уводе различити облици забрана (од потпуне забране кретања до ограничења кретања условљена поседовањем зеленог пасоша (доказ да особа није заражена или да је вакцинисана). Ипак, лишавање или ограничавање права поред опште популације додатно неповољно утиче на друге вулнерабилне категорије становништва (посебно здравствено угрожене и хроничне болеснике) али, свакако, на положај лица чија је слобода или обим права, иначе, ограничен. Када је реч о овој другој категорији, лица лишена слободe или затворска популација може посебно бити погођена додатним одузимањем законом ограниченим обимом одређених права у затворским установама. Аутори су свој рад посветили затворској популацији као једној од рањивих група у време пандемије, утицају КОВИД-19 на функционисање затворских система, нормативном аспекту здравствене заштите затворске популације на глобалном нивоу, упоредним трендовима заражавања и превенције ширења вируса затвореника, а посебно ограничавању права осуђених лица у српском пенитенцијарном систему за време пандемије.