PRISON LIFE ORGANIZATION AND SECURITY: CRIMINOLOGICAL, PENOLOGICAL, SOCIOLOGICAL, PSYCHOLOGICAL, LEGAL, AND SECURITY ASPECTS

Prison Life Organization and Security: Criminological, Penological, Sociological, Psychological, Legal, and Security Aspects

Editor in Chief

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Prison life Organization and Security: Criminological, Penological, Sociological, Psychological, Legal, and Security aspects

CONTENTS

THE EDITOR'S INTRODUCTION

The prison system represents a complex and multifaceted institution that reflects the intricate interaction between law enforcement, social norms, human behavior, and institutional structures. Prisons are not merely facilities for deprivation of liberty but also a microcosm of society, shaped by various social, psychological, legal, and security dynamics. They are spaces where numerous challenges intersect—criminal behavior, mental health, human rights, and security issues.

Beyond their primary role in the administration of justice, prisons also mirror broader societal contexts, including economic inequalities, stigmatization, and shortcomings in social support systems. These institutions face complex tasks of balancing the protection of society, providing humane care for inmates, delivering treatment programs, and ensuring a safe environment for both prisoners and professional prison staff. Such diversity of challenges necessitates a holistic approach that involves coordination among legal systems, healthcare and social services, as well as the engagement of the entire community. Prison systems are integral parts of society, whose successes or failures have far-reaching consequences for the social fabric as a whole.

The publication *Prison Life Organization and Security: Criminological, Penological, Sociological, Psychological, Legal, and Security Aspects* provides a comprehensive insight into the numerous dimensions that shape life in prisons, analyzing the organization and security of prison systems worldwide. The collection comprises 22 chapters divided into four thematic sections, each addressing key aspects of prison life.

In the first chapter, *"Criminological and Sociological Aspects of Prison Life: Social Dynamics, Criminal Behavior, and Institutional Influence"*, key aspects of prison life and its impact on inmate behavior are explored. The papers analyze the influence of the social climate in prisons on disciplinary violations and recidivism, the role of organized crime in the Brazilian prison system, the linguistic characteristics of prison slang, and the impact of the prison environment on recruitment into criminal organizations.

The chapter *"Penological and Security Aspects of Prison Systems"* focuses on institutional control, security measures, and the management of inmate behavior. Topics include legitimacy and order in Slovenian prisons, special regimes for life sentences in Italy, the safety of female prisoners in Serbia, and the challenges of reintegrating former prisoners into the workforce. The chapter also explores the rehabilitative potential of prison visits, the impact of prison architecture on quality of life, and the socio-economic aspects of work during and after serving a sentence.

The chapter *"Psychological and Health Aspects of Prison Life"* explores mental health challenges, access to healthcare, and the impact of the prison environment on the psychological aspects of inmate life. Topics include the dynamics of staff-prisoner relationships, the right to access healthcare in prisons in line with international standards, and secondary traumatization of women in helping professions providing psychosocial support to vulnerable groups. It also examines antisocial personality disorder in offenders and opportunities for empirical research on religiosity within the prison population.

The chapter *"Legal Aspects and Frameworks of Prison Systems"* focuses on the rights of prisoners, penal legislation, and the legal frameworks regulating inmate life. Topics include the competencies required for working in the prison system, China's extradition legal system, the legal nature and working conditions of prisoners from a labor law perspective, and legal responses to deviant behavior not caused by legal offenses. It also explores prisoners' right to freedom of expression and the legal framework for the criminal liability of juvenile offenders in Romania.

A total of 40 authors from Slovenia, Portugal, Brazil, Italy, Croatia, China, Romania, and Serbia contributed to the development of this book, shedding light on the complex topics of prison life organization and security through their research and perspectives. Relying on diverse disciplinary viewpoints and international contexts, the authors offer critical analyses of the key challenges facing modern prison systems.

The topics covered include the impact of organized crime, the role of architecture in shaping prison life, mental health challenges among inmates, and the legal rights of prisoners. This interdisciplinary approach ensures that the publication is relevant to a wide audience, including scholars, practitioners, policymakers, and advocates of prison system reform. The thematic sections encompass criminological and sociological perspectives, institutional and security frameworks, psychological and health challenges, as well as legal aspects. The book thoroughly examines key areas influencing the daily living conditions of inmates and prison staff, aiming to deepen the understanding of the factors shaping their lives within the system, as well as the broader social and institutional implications of prison operations. The goal of this publication is not only to highlight the challenges within prison systems but also to identify opportunities for improving prison life. By understanding the core dynamics of life behind bars, all relevant stakeholders can contribute to creating prison environments that effectively balance security, rehabilitation, and respect for human dignity.

Ljeposava Ilijić

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Review Paper

Exploring the Relationship Between Prison Social Climate and Misconduct and Recidivism - Review of Current Knowledge

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Prison social climate represents enduring social, emotional, organisational and physical characteristics of a correctional institution as perceived by inmates and correctional staff. Prison social climate may be attributed partly to the shared environment and common characteristics of individual prisoners in the unit/prison. It is assumed that prison social climate also exerts lasting, post-incarceration effects. Thus, this study aims to describe the potential criminogenic impacts of different prison social climate dimensions on prisoners' behaviour within prison and upon release. Among reviewed prison social climate dimensions, observed staff-prisoner relationships, prisoner-to-prisoner relationships, and observed levels of safety are considered the most important determinants of prison social climate. Despite the conceptual and methodological diversity of the

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reviewed studies, it could be concluded that prisoners who rated their institutional experiences more negatively, especially in terms of in-prison relationships and security, were more likely to misbehave in prison and were more likely to (re)offend.

Keywords: *Prison social climate, misconduct, recidivism*

Introduction

Imprisonment may influence prison misconduct and post-release recidivism through various mechanisms, and their understanding may improve correctional effectiveness and desistance process. The notion that "pains of imprisonment" (e.g., crowding and security level) may have the unintended consequence of increasing future offending is not new (see Sykes, 1958). However, previous research on the relationship between imprisonment and (re)offending yielded mixed results (e.g., Bales & Piquero, 2012; Loeffler & Nagin, 2022), partly due to methodological limitations and neglecting the importance of the heterogeneity of differences in prison experiences (Van Ginneken & Palmen, 2022; Ware & Galouzis, 2019).

To improve recidivism prediction, scholars recognised the importance of incorporating prison experiences' differences into studies (DeLisi, 2003; Mears et al., 2016; Mears & Mestre, 2012; Nagin et al., 2009; Visher & Travis, 2003). The amount of personal deprivation experienced was better and more accurately measured using the subjectively experienced prison social climate (Bosma et al., 2020). Those subjective perceptions and experiences are assumed to exert lasting, post-incarceration effects (e.g., Maruna 2001).

By utilising an unstructured literature review based on the Wos, Scopus, and Google Scholar search while using keywords: (prison) climate & misconduct/ offending/ reoffending/ recidivism study aims to describe potential crime-productive effects of shared subjective experiences of prison conditions - prison social climate.

Theoretical perspectives related to prison misconduct and (re)offending

When explaining prison (mis)behaviour, researchers mainly rely on propositions of the deprivation model, the importation model, and the situational model (Wooldredge, 2003), which differ in the importance they attribute to different personal and environmental factors while explaining

misconduct. According to the importation model, the likelihood of misconduct is determined mainly by individual characteristics (e.g., age) and pre-prison experiences (e.g., violent criminal history, previous incarcerations, alcohol and drug use disorders, psychiatric disorders) (Andrews & Bonta, 2010; Steiner et al., 2014; Steiner & Wooldredge, 2019; van Ginneken & Wooldredge, 2024). According to the deprivation model, the prison environment (composition of the prisoner population, the composition of staff, and prison security level, Camp & Gaes, 2005; Wooldredge et al., 2001) through "pains of imprisonment" (e.g., loss of liberty autonomy, security, desirable goods and services, and heterosexual relations) have adverse effects on prison behaviour. The situational or management models postulate those features of the institutional setting (e.g., physical environment - prison architecture, temperature, staff resources, case management) affect prison behaviour (Morris & Worrall, 2014) and that prison misconduct is a result of dynamic interplay between inmate and the prison milieu.

Reoffending is often explained by the exposure of offenders during the imprisonment to negative labelling (Braithwaite, 1993), increased defiance (Sherman, 1993), weakened social bonds (Laub & Sampson, 1993), and learning "criminal" skills through frequent contact with criminal associates (Sutherland et al., 1992). Blevins et al. (2010) explain prison misconduct, and Listwan et al. (2013) explain reoffending by using general strain theory (GST) and integrating its postulates with the importation and deprivation perspectives. According to GST, certain strains - physically or psychologically distressing events and conditions (e.g., negative treatment, the loss of individually valued things, and the inability to achieve valued goals) increase the likelihood of crime. Offenders may have experienced those strains before and during imprisonment. It is hypothesised that strains most conducive to crime are high in magnitude, perceived as unjust, associated with low control, and create pressure or incentive for criminal coping. If they result in negative emotional states or/and traits (anger, frustration), reduce self-control and social control, and foster the social learning of crime, it is very likely that prison misconduct or reoffending will emerge.

Prison social climate

The concept of social climate originates from Murray's (1938) hypothesis that social environments are significant determinants of behaviour and represent a set of characteristics that "(a) distinguish the organisation from other organisations, (b) are relatively enduring, and (c) affect the behaviour

of people in the organisation" (Forehand & Gilmer, 1964, p. 362). The social climate is an intervening variable influenced by the structural characteristics of the organisation, which, in turn, influences individual behaviour and "a set of organisational properties and conditions that are perceived by its members and are assumed to exert a major influence on behaviour" (Wright, 1985, p. 258). Moos (1975) was the first to apply the climate to the study of prisons and described it as a set of "material, social, and emotional conditions of a given unit and the interaction between such factors" (Moos, 1989) that distinguishes prison (units) from one another. Recent prison social climate definitions emphasise the concept of complexity, multifacetedness, dimensionality, and subjectivity and consider climate a relational social phenomenon (Lewis, 2017; Liebling et al., 2011; Mann et al., 2019). For example, Ross et al. (2008, p. 447) define prison social climate as the enduring "social, emotional, organisational and physical characteristics of a correctional institution as perceived by inmates and staff", and Tonkin (2016, p.1377), suggested it could be seen as "a multifactorial construct, consisting of various components that describe how a given unit is perceived by its staff or residents" which influences the well-being and behaviour of prisoners both during and after imprisonment (Boone et al., 2016). According to Ware & Galouzis (2019), the conceptualisation and operationalisation of prison social climate have developed from a managerial perspective (objective and subjective aspects of safety and security and management performance) (Saylor, 1984) and therapeutic perspective (correctional staff support, safety, and perception of opportunities for inmate personal growth and development through therapy) (Schalast et al., 2008; van de Helm et al., 2011).

Prison social climate may be explained partly by the shared environment of the prison or its unit and partly, due to selective composition, by common individual characteristics of the members in the unit or prison (van Ginneken & Nieuwbeerta, 2020). It still needs to be made clear to what extent prison social climate is an individual level versus a prison (unit) phenomenon. However, theoretically, climate exists at the meso/macro level; it is more than the sum of individual perceptions and has a contextual effect on outcomes (van Ginneken & Nieuwbeerta, 2020). Hence, the prison social climate is a complex phenomenon because it integrates 1) subjective experiences with objective conditions in prisons; 2) the heterogeneity of prisons' structure itself, including, for example, closed, semi-open, and open departments with largely different conditions related to prisoners' well-being and interpersonal dynamics; 3) the complexity of interpersonal relations including the interpersonal processes between the prisoners, the staff-prisoners interactions, and the social

dynamics between the staff including their different roles in prison environment (e.g. security and treatment staff) and different positions in prison hierarchy.
Also, researchers have yet to agree on the number and conceptualisation of prison social climate dimensions. However, they mainly use four main conceptual categories: relationship (or *harmony*) dimensions, security dimensions, professionalism dimensions, and the sense of personal development and well-being within the prison experience (Liebling, 2004; Liebling et al., 2011), or six major domains: 1) relationships in prison, 2) safety and order, 3) contact with the outside world, 4) prison facilities, 5) meaningful activities, and 6) autonomy (Bosma et al., 2020). Since the prison social climate is an inherently relational social phenomenon many researchers consider that staff-prisoner relationships (e.g., Liebling et al., 1999; Beijersbergen et al., 2016), followed by inmate (peer-to-peer) relationships (e.g., van Ginneken & Palmen, 2022), and perceived safety (e.g., Mann et al., 2019; Schalast et al., 2008; Auty & Liebling, 2020) as the most important determinants of prison social climate.

The relationship between dimensions of prison social climate and prison misconduct and recidivism

Prison social climate can potentially facilitate successful prisoners' rehabilitation, or it can lead to misconduct and (re)offending (Auty & Liebling, 2020). Prison social climates, like all social climates, are dynamic and malleable (Lewis, 2017), but their impact is mainly conceptualised as negative (Cid et al., 2021; Dhami et al., 2007) contributing to the maintenance of criminal identity (Perrin & Blagden, 2014) and it is often considered counterproductive to the rehabilitation and resocialisation (Frost & Ware, 2017; Liebling & Maruna, 2005; Ross et al., 2008). Due to the complexity of the prison social climate construct as well as its potential relationship to prison misconduct and recidivism, various dimensions of prison climate have been studied in relation to recidivism. The association of prison social climate with misconduct and recidivism will be reviewed for the previously mentioned six domains considered the most important in determining the quality of prison life (e.g., Bosma et al., 2020).

1) Staff-prisoner relationships

Researchers consider the staff–prisoner relationship a key aspect of a "good prison"' (Liebling & Arnold, 2004; Maguire & Raynor, 2017), and within prison social climate research, this concept is often used

interchangeably with “support”, “professionalism”, and “therapeutic hold” (van Ginneken, 2020). Prison social climate can also be viewed as a network where specific aspects of social climate represent nodes and the relationships between them edges (for the usage of Network analysis in social science, see: Costantini et al., 2015; Epskamp et al., 2018; Međedović, 2021). Using network framework, when Measuring the Quality of Prison Life (MQPL+) model of prison social climate is analysed, the staff-prisoner relationship represents one of the most central nodes, having the most important place in the whole system of prisoners’ quality of life (Međedović et al., 2024b). Generally, when prisoners are getting less satisfied with staff-prisoner relationships, including experiencing procedural injustice (“quality of decision-making procedures and fairness in the way citizens are personally treated by law enforcement officials", Bottoms & Tankebe, 2013, p.119), misconduct is more likely (e.g., Beijersbergen et al., 2015; Bosma et al., 2020; Reisig & Mesko, 2009; Rocheleau, 2013).

Specifically, in Wright’s (1993) study, prisoners who rated themselves as having less support from staff reported more external problems, such as arguing and fighting with other prisoners. Joon Jang (2020), among adult male inmates in Korea, revealed that inmates' dissatisfaction with correctional officers was directly related to aggressive, but not to property misconduct, and the relationship to aggressive misconduct was only partially mediated by negative emotion - anger. The data from Slovenian prisons show that impaired relations between staff and prisoners generate/mistrust and hostile attributions, which are consequently associated with in-prison violence (Bezlaj & Tadič, 2024). Congruently, the prisoners in Serbia who had disciplinary sanctions[6] and prisoners who were imposed by special measures[7] also had lower levels of the Harmony MQPL dimension, which encompasses staff-prisoner relationships (Ćopić et al., 2024).

As an aspect of deprivation contextual forces, prison social climate may be even more important to predicting institutional conduct than importation

[6] Disciplinary sanctions represent a set of indicators of prison misconduct, e.g., correctional officers’ reprimand; restriction or ban on receiving packages for up to three months; deprivation of granted extended rights and benefits for up to three months; and limitation or ban on the disposal of money in the prison for up to three months.

[7] Special measures are confiscation and temporary retention of items otherwise permitted, accommodation in a specially secured room, accommodation under increased supervision, testing for infectious diseases or psychoactive substances, and separation from other prisoners.

factors like personality traits (Wooldredge, 2003). The research conducted in Serbia compared predictive powers of prison social climate and "Dark Tetrad" personality traits (Machiavellianism, psychopathy, narcissism, and sadism, Paulhus et al., 2014), and the findings showed that results on Harmony MQPL prison social climate dimension outperformed Dark Tetrad traits in predicting disciplinary measures and executing solitary confinement on a prisoner (Međedović et al., 2024a).

Sparks and Bottoms (1995), based on qualitative study results from two male prisons, concluded that procedural justice is also important for prison order. Liebling (2004) showed that inmates from five different UK prisons considered prisons with lower fairness as more disorderly. Osgood & Briddell (2006) revealed that juvenile post-release offending rates were higher if it was considered that the institution operates within a corrective ethic than within a treatment ethic. Reisig and Mesko (2009) demonstrated that perceived unjust treatment by staff influences prisoners' misbehaviour when examining the association between procedural justice and self-reported and registered violation of institutional rules in the following six months. Similarly, Beijersbergen et al. (2015), in a longitudinal, Dutch nationwide study, found that inmates who perceived unfair and inhuman treatment and had negative relationships with correctional officers were subsequently more likely to commit prison misconduct than those who did not. The effect was present after controlling for prior misbehaviour, but the relationship between fairness and misconduct was one-directional and mediated by negative emotions (e.g., anger, resentment, and irritation due to treatment by correctional officers). Beijersbergen et al. (2016) longitudinal study showed that procedural justice is also related to post-release offending. Although the effect was small, prisoners who felt treated by correctional staff fairly and respectfully during imprisonment were less likely to get re-convicted in the 18 months following release. In addition, no mediating effect of legitimacy in the procedural justice and recidivism relationship was observed. Auty & Liebling's (2020) results have confirmed that "good enough" social interactions (as a part of MQPL dimensions of Humanity and Decency) were important in predicting reoffending. Bosma et al. (2020), in a Dutch nationwide study, found that out of six dimensions of perceived prison social climate, only those with lower-than-average experience of staff–prisoner relationships and procedural justice were more likely to have registered or reported misbehaviour than those with a more positive experience.

Contrary to these studies' results, van der Laan and Eichelsheim (2013) have not found an effect of perceived justice on registered aggressive misconduct among juveniles in correctional institutions, and Cook &

Hoskins Haynes (2020) observed that negative relationships between inmates and prison staff were not correlated significantly with perceived likelihood of reoffending. Steiner and Wooldredge (2018) found no significant impact of inmates' perceptions of procedural and distributive justice during rule infraction hearings on the number of subsequent violent incidents. Like the other prison social climate dimensions, Van Ginneken and Palmen (2022) found that an association between staff-prisoner relationships and misconduct becomes insignificant when controlling individual risk factors (e.g. age, index offence, incarceration length). Despite those studies' results, it can be concluded that relatedness between staff-prisoner relationships and in-prison misconduct or post-release recidivism is frequently researched and relatively well established.

2) Peer relationships

The impact of peer relationships, along with staff-prisoner relationships, is one of the primary research interests in predicting misconduct and reconvictions. Across prison social climate studies, "peer relationship" is sometimes used interchangeably with "relationships", "cohesion", and also "harmony" concepts (van Ginneken, 2020). The study results on peer relationship – misconduct/reconvictions relatedness are quite concordant. For example, Listwan et al. (2013) found decreased odds of recommitment to prison among male offenders who were recently released from prison and residing in halfway houses (accommodations for former prisoners where they can stay for a limited period of time in order to adapt or prepare for life outside prison) that those who were reporting more negative relations with other inmates (measured as direct victimisation). Even more specifically, Schubert et al. (2012) found a 32% reduction in the probability of self-assessed antisocial activity in the year following release among youth who reported less influence from antisocial peers in the institutional setting. Within this sample of serious offenders, perceptions of aspects of the institutional experience were associated with recidivism over and above individual characteristics as well as facility type. However, McGrath's et al. (2012) analysis of retrospective data from parolees showed that the positive relationship between in-prison victimisation and violent behaviour in prison became nonsignificant or reduced in size when negative emotionality (trait anger) was controlled for.

More recent research supports a significant association between poor inmate relationships and misconduct/reconvictions. For example, Bosma et al. (2020) showed that a more positive experience of prisoner relationships was related to a decreased number of self-reported

misbehaviour. Van Ginneken's (2022) study results confirmed the increased risk of all types of misconduct (violence, property, drugs, and possession of other contraband items) among inmates who reported a poor cellmate relationship in comparison to those with a neutral relationship or prisoners in single cells. Van Ginneken and Palmen (2022) found that more positive peer relationships were consistently positively associated with lower reconviction rates two years after release from prison. Thus, it seems that inmate relationships are a significant contributor to the prisoners' misconduct and that they have an important and prolonged effect even to the post-release convictions.

3) Autonomy

The autonomy or "freedom" (van Ginneken, 2020) dimension is among the least researched prison social climate dimensions within the corpus of reviewed studies. However, those rare research still confirm that structure, support, freedom, and privacy are four dimensions of climate predictive for disruptive behaviour (Kevin & Wright, 1993). Prisoners experiencing lower personal autonomy (measured by the MQPL questionnaire) were those more often sanctioned by disciplinary corrections because of in-prison misconduct, while prisoners experiencing higher autonomy less often showed rule-breaking and disruptive behaviour (Ilijić et al., 2024). More positive autonomy experiences also predict lower reconviction rates even two years after release from prison (van Ginneken & Palmen, 2022).

4) Meaningful activities

Prison social climate dimension of "meaningful activities" has often been connected to "personal growth", "well-being and development", or just "activity" (van Ginneken, 2020) and mainly absorbs the prisoners' experience due to inclusion in a variety of prison programs – rehabilitative, educational and/or vocational, but also with the prison pain of dealing with boredom. While the opportunity to engage in constructive activities while in prison might result in increasing prisoners' self-esteem and improving prisoners' lives, boredom may result in too much time to dwell on one's current and potential problems, rumination about negative past events, and too much time to think about and carry out acts of misbehaviour and violence (Rocheleau, 2013). According to McCorkle et al. (1995), institutions that involved a greater proportion of prisoners in educational and vocational programs were characterised by lower rates of prisoner–staff assaults, and Rocheleau (2013) found that difficulty in dealing with

boredom was positively associated with both serious prison misconduct in general and prison violence in particular. Certain evidence about the impact of activities such as work assignments and education on behaviour are not so beneficial (e.g., Howard et al., 2020; Teasdale et al., 2016), but in a Dutch nationwide study by Bosma et al. (2020), a higher-than-average experience of availability of meaningful activities was related to decreased numbers of self-reported misbehaviour. Also, Van Ginneken and Palmen (2022) found that a more positive experience of meaningful activities was associated with lower reconviction rates two years after release from prison. Thus, we could speak in favour of including prisoners in subjectively meaningful activities during imprisonment and its generally prosocial effect on behaviour.

5) Contact with the outside world

Regarding visits, as one of the most researched aspects of contact with the outside world within prison social climate studies, there are contradictory results concerning visits – misconduct association. There is some evidence that receiving visits reduces misconduct and lack of visitation is associated with higher offending (e.g., Agúndez Del Castillo et al., 2022; Cochran, 2012; Hensley et al., 2002; Jiang & Winfree, 2006; Lahm, 2008; Mears et al., 2012) because of less support from their relatives, families and friends and more severe breakdown of the relationship. However, most studies have found that receiving visits is associated with a higher risk of offending (Bosma et al., 2020; Casey-Acevedo et al., 2004; Siennick et al., 2013) or that it has no significant effect (Howard et al., 2020; Jiang & Winfree, 2006; Lahm, 2008; Woo et al., 2016). In the Bosma et al. (2020) study, prisoners who were more satisfied with the frequency of contact with the outside world reported misbehaviour more often than those without such contact. This is possibly related to the quality and/or timing of visits, the type of visitor, and the fact that visitors may be used to traffic contrabands (Bosma et al., 2020).

6) Security

When it comes to security, in the context of prison social climate studies, we often speak about concerns for personal safety and feelings of worrying and fear. Generally, most studies confirmed a positive association between experiencing worries and fear for personal safety and consequent misconduct. For example, Kevin and Wright (1993) found that the less safe prisoners feel, the more they report external problems (arguing and fighting

with others). In Rocheleau's (2013) study, concerns about one's safety (fear) were positively related to general serious misconduct and violence when age, prior incarcerations, prior psychiatric treatment, time served, and minority status were controlled. Furthermore, Listwan et al. (2013) showed that offenders recently released from prison who found that the prison environment was negative (i.e., fearful, threatening, and violent) had increased odds of both arrest and recommitment to prison. Similarly, Auty & Liebling's (2020) results have indicated that low scores on security dimensions (organisation and consistency, the level of drugs, bullying and victimisation in the prison, policing and security, and prisoner safety) were important in predicting rates of proven reoffending. In van Ginneken and Nieuwbeerta's (2020) study, the lower the average level of safety experienced in a unit, the more individuals in this unit report the more misconduct, while Joon Jang (2020) observed a significant relationship between overcrowding and inmate misbehaviour only if it was related to a decrease in prison security.

However, several studies also showed different trends, although their results seem more as an exception. For example, in Cook & Hoskins Haynes's (2020) study, the odds of reporting a perceived likelihood of reoffending upon release were significantly lower for those who reported fearing for their safety in prison, but only for first-time prisoners. On the other hand, Van Ginneken and Palmen (2022) found a non-significant relationship between subjective safety (security) and recidivism, which they attributed to high scores on safety across prisons in their study.

Current knowledge and challenges for future research

There are large differences in the way prison social climate and misconduct/reconvictions were operationalised among studies that investigate the association between prison social climate and prisoner incidence of misconduct (Bottoms, 1999; Camp & Gaes, 2005; Reisig & Mesko, 2009; Bosma et al., 2020; Van der Helm et al., 2012), reconvictions (Auty & Liebling, 2020) and recidivism (Schubert et al., 2012). Thus, observed results may be at least partly attributable to the research methods. Most of the studies were conducted cross-sectionally among adult male prisoners, so it is hard to conclude if prisoner misconduct was influenced by prison social climate or *vice versa*. If perceived prison social climate and self-reported misconduct were gathered simultaneously and reported by the same persons, shared method bias is usually present (Bosma et al., 2020). Across studies, the relationship between different prison social climate dimensions and misconduct/reconvictions is not equally

researched, making it difficult to generalise findings across less researched dimensions. Since dimensions of prison social climate are usually correlated, it is also difficult to conclude about the effects of the individual dimensions. Due to their overlap, climate dimensions may have shared effects on misconduct/reconvictions (Van Ginneken et al., 2019). The relationship between different dimensions of prison social climate and misbehaviour is far less clear for different types of misconduct (e.g., violent/non-violent; officially recorded – self-reported) and for post-release recidivism and (re)offending. Challenges for future research also represent reaching a more comprehensive conclusion about the relationship between prison social climate and misbehaviour, considering the security of prison levels and dynamics in different prison units (e.g. closed, semi-open, open). Also, it is unknown for how long the effects of experienced prison social climate exert their influence on offending after release, especially if those experiences were not extreme and/or durable, and what their impact is in combination with other potentially confounding and more recently present risk factors for post-release recidivism (Gaes, 2005). Considering the dynamic character of the prison social climate and its dependence on (inter)personal and contextual factors, there is a need for additional longitudinal research that will examine the prison social climate – misbehaviour relationships over longer periods by capturing perspectives from both prison officers and prisoners simultaneously.

Furthermore, the conclusion related to (in)direct mediating effect of negative emotions (e.g., Johnson Listwan et al., 2013), as well as the size of the effect of experienced prison social climate on misconduct/reconvictions after controlling for other (e.g., individual) risk factors is still not reached (van Ginneken & Nieuwbeerta, 2020; Cook & Hoskins Haynes, 2020). Based on the meaningful relationships between aggregate-level prison social climate variables and misconduct, it can be concluded that prison social climate has (correlational) effects. However, these should not be overstated because if most variance on prison social climate variables was concentrated at the individual level (effect did not remain significant when controlling for individual risk factors), then prison social climate appears to be shared only to a small extent, and it can be best conceptualised as individual perceptions (van Ginneken & Nieuwbeerta, 2020; Yu et al., 2022).

However, based on the studies that were conducted on relatively large samples, longitudinally (e.g., Schubert et al., 2012); Johnson et al., 2013), and in various and numerous correctional institutions, as well as in different countries, it could be concluded that prisoners who rated their institutional experiences more negatively, especially in terms of in-prison relationships

and security, were more likely to self-report misbehaviour/reconvictions. Thus, maintaining a positive prison environment - reflected in good relationships, a sense of security, and a procedurally just treatment, may reduce the potentially criminogenic effect of imprisonment.

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Review Paper

Understanding the Impacts of Organized Crime on the Brazilian Prison System: A Criminological Analysis[1]

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The aim of the present paper is to analyze how criminal organizations influence the daily life of Brazilian prisons and how ineffective the solution presented by the government is in terms of trying to control the conflicts and rebellions in which they are routinely involved. To this end, we will study the emergence of the main criminal organizations in Brazil, namely the "Comando Vermelho" and the "Primeiro Comando da Capital (PCC)", in order to determine what factors influenced their founders to converge their interests and form these groups, which are currently no longer limited to the intra-prison space, but rather control entire slums in large Brazilian cities, controlling not only drug trafficking, but also the daily lives of their inhabitants. Subsequently, based on the theoretical framework of penal abolitionism, we will demonstrate that the solutions presented by the government are incapable of controlling the emergence and action of criminal organizations.

[1] The part of the results was partially presented at the International Scientific Conference: "LIFE IN PRISON: Criminological, Penological, Psychological, Sociological, Legal, Security and Medical Issues" (Belgrade, December 2 and 3, 2024), organized by the Institute for Criminological and Sociological Research

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Introduction

The aim of the present paper regards criminal organizations in Brazil. More specifically, it analyzes how these groups not only are born and gain notoriety in those environments, but also literally control Brazilian prisons. As we will demonstrate, however, their actions and their dominance already go beyond the prison walls, affecting entire communities.

According to data from Infopen, in 2014 Brazil had a prison population of 607,731 (six hundred and seven thousand, seven hundred and thirty-one) inmates, of which 41% (forty-one percent) were still awaiting trial, that is, they had not yet been convicted. These statistics also highlight the high deficit of places in the Brazilian prison system, since there were only 376,669 (three hundred and seventy-six thousand, six hundred and sixty-nine) places, which results in a deficit of 232,062 (two hundred and thirty-two thousand and sixty-two) places in prisons to meet this demand (Ministério da Justiça, 2014, p. 11-12).

The results of this situation, as one might imagine, are prisons and penitentiaries in subhuman conditions, where inmates live in unsanitary conditions, in small and overcrowded cells. In addition, it is difficult for the government to control these establishments, since the number of employees is insufficient to meet the number of inmates, and they often do not receive adequate training. This situation facilitates, as will be demonstrated throughout the paper, the emergence of internal centers of power, which end up forming groups and establishing leadership, with a clear objective of defending themselves and obtaining better conditions.

However, once the boundaries of prisoners' self-defense have been crossed, these organizations often find themselves involved in various forms of crime, such as drug trafficking, which further accentuates the struggle for power in prisons, with a view to financial gain.

In 2017, the already well-known Brazilian prison situation became even more evident, when, on January 1st, a conflict between factions occurred in the Anísio Jobim Penitentiary Complex, in the city of Manaus, in which 60 (sixty) inmates were killed, becoming the second largest massacre in the history of the country. In the same week, in retaliation for the previous attack, 33 (thirty-three) people were executed in the agricultural penitentiary of Monte Cristo, in the state of Roraima. Later, another 26 (twenty-six) were executed on January 14th, in the penitentiary of Alcaçuz, in Rio Grande do Norte (Oliveira, 2017).

As will be shown throughout the paper, the policy commonly adopted by the Brazilian government to try to solve this issue is the constant investment in the construction of new prisons, a pro-incarceration policy that is not new, according to data from the National Survey of Penitentiary Information (Infopen) — a statistical information system for the Brazilian penitentiary system, made available by the National Penitentiary Department in partnership with the Ministry of Justice —, according to which, in 2013, the federal government invested approximately R$1.1 billion reais in the construction of new prisons (Brasil. Ministério da Justiça e Cidadania, 2014a, p. 6).

It turns out that, even with this constant investment of resources in the construction of new penitentiaries, the deficit of vacancies is far from being filled. In this sense, the following table shows the situation of the prison population in the Brazilian penitentiary system and the lack of places:

Table 1 — People deprived of liberty in Brazil in December 2014.

Total prison population	622.202
State Penitentiary System	584.758
Security Departments/Police Station Cells	37.444
Federal Penitentiary System	397
Vacancies	371.884
Vacancy deficit	250.318
Occupancy rate	167%

Source: Brasil. Ministério da Justiça e Cidadania, 2014b: p. 18.

At the time of the data collection, all Brazilian states had overcrowded prisons, with the state with the lowest occupancy rate being Espírito Santo, with 1.23 prisoners per place, and the state with the highest, Rondônia, with 2.92 prisoners per place (Brasil. Ministério da Justiça e Cidadania, 2014b, p. 18).

When the prison system faces a crisis, the Government's response is to build more prisons. However, despite the large financial investment repeatedly made by the Brazilian government, the deficit in vacancies is still 250,000 people. It is also important to observe that this is not an issue restricted to certain locations, but rather one that is present throughout the country.

In order to provide a perspective of the historical evolution of the situation, the following graph shows the gradual increase in the total number of

prisoners, prison vacancies and pre-trial detainees from 2003 to 2014 in Brazilian prisons.

	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
Total number	**308.304**	**336.358**	**361.402**	**401.236**	**422.590**	**451.429**	**473.626**	**496.251**	**514.582**	**548.003**	**581.507**	**622.202**
Number of vacancies	**179.489**	**200.417**	**206.559**	**236.148**	**249.515**	**266.946**	**278.726**	**281.520**	**295.413**	**310.687**	**341.253**	**371.884**
Temporary	**67.549**	**86.766**	**102.116**	**112.138**	**127.562**	**138.939**	**152.612**	**164.683**	**173.818**	**195.036**	**216.342**	**249.668**

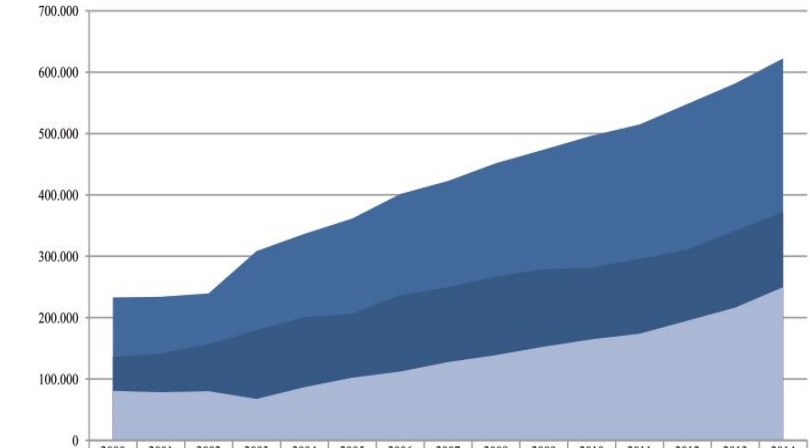
Source: Brasil. Ministério da Justiça e Cidadania, 2014b: 22).

According to the data presented, between 2003 and 2014, the prison population increased by 101.81%, while the number of places increased by 107.19%. Considering the constant increase in these figures, it can be concluded that the system is characterized by overcrowding (Brasil. Ministério da Justiça e Cidadania, 2014b, p. 22).

The construction of new prisons or the creation of new places in existing penitentiaries has high economic and social costs, and it seems that expanding the system indefinitely is neither possible nor desirable.

The prison policy model adopted in Brazil is ineffective in solving the problem of overcrowding, and only maintains the precariousness of the Brazilian prison system. Therefore, the purpose of this investigation is to establish a connection between incarceration and the emergence of criminal organizations in Brazil, in addition to a critical analysis of this phenomenon from an abolitionist perspective.

Graph 1 — Comparative evolution of the number of people in the prison system, number of vacancies and pre-trial detainees in Brazil.



	2000	2001	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
População	232.755	233.859	239.345	308.304	336.358	361.402	401.236	422.590	451.429	473.626	496.251	514.582	548.003	581.507	622.202
Nº de vagas	135.710	141.297	156.432	179.489	200.417	206.559	236.148	249.515	266.946	278.726	281.520	295.413	310.687	341.253	371.884
Provisórios	80.775	78.437	80.235	67.549	86.766	102.116	112.138	127.562	138.939	152.612	164.683	173.818	195.036	216.342	249.668
% provisórios	35%	34%	34%	22%	26%	28%	28%	30%	31%	32%	33%	34%	36%	37%	40%

It is important to note that although criminal organizations are usually associated solely with drug trafficking, the problem in question currently goes much further, involving several other criminal behaviors. In fact, as *Bruno Shimizu* denounces, although it is commonly understood that these groups are "parallel to the state", what is noted, on the contrary, is a relationship of symbiosis, since the corruption of police officers and state agents is an essential element for the success of these organizations. In addition, there is a true negotiation of disciplinary power, converging formal and informal powers in the search for a certain point of balance (Shimizu, 2011, p. 88-90).

In this sense, according to *Sykes*, since prison administrations are unable to control all prisoners, they often cede part of their power to informal leaders, negotiating and making concessions in order to enable a minimum of control over the establishment (Sykes, 2007, p. 40-62). Furthermore, according to *Ana Gabriela Mendes Braga*, the “blind eye” turned by formal bodies of power regarding the existence of informal powers in prison is due not only to the impossibility of overcoming this reality, but also to the advantages of this framework for the organization of the prison itself, resulting not only from the illicit advantages arising from corruption, but also from the control of the diffuse crowd (Braga, 2008, p. 205f).

In view of this scenario, in the first chapter we will analyze how criminal organizations emerged and were established in Brazil, noting that they have always had one thing in common, namely, the need felt by prisoners to resist the violations of their rights. In the next chapter, we will conduct a criminological analysis of the phenomenon of criminal organizations, seeking to explain why they were formed and what makes them continue to exist today.

Finally, in the last chapter, we will analyze the issue in light of penal abolitionism — a movement that proposes the abolition of criminal law and criminal penalties applied by the State —, more specifically the abolitionist proposal of *Thomas Mathiesen*. One of the abolitionist current's greatest concerns is the harm that prison sentences and incarceration represent to the individual. Prison causes personal, family and social losses to the convicted person, and the penal system creates a feeling of stigmatization that contributes to their social exclusion and a marginalized way of life.

The emergence of Brazilian criminal organizations

"Comando Vermelho"

As already mentioned, the vast majority of criminal organizations in Brazil originated as a group of inmates who, at a certain point during their sentence, decided to organize themselves in order to obtain better conditions in prisons. One of the best examples of this is the *Comando Vermelho*, which has a strong presence in prisons in Rio de Janeiro and currently still "controls" several favelas in the city.

As *Carlos Amorim* explains, in 1979, the Ilha Grande Prison, in the State of Rio de Janeiro, had the capacity to house 540 (five hundred and forty) prisoners, but there were 1,284 (one thousand two hundred and eighty-four) living in terrible conditions. It was, according to the author, the poorest and most unhealthy prison in the State, where the most dangerous convicts were sent (Amorim, 1993, p. 16).

It turns out that, during the Brazilian military regime, many people convicted of political crimes were also sent there, due to a government policy that attempted to equate these crimes, especially those committed by the "political left", with the so-called common crimes (Amorim, 1993, p. 19). In this sense, Decree-Law 898/69 was approved, which in its Article 27 expressly provided for the conduct of robbing financial institutions, which was widely practiced by the Brazilian left at the time, as a form of

protest[6]. As *Bruno Shimizu* explains, the expression "whatever their motivation was" aims precisely to equate political prisoners with those who committed robberies for purely financial purposes (Shimizu, 2011, p. 116-117)[7].

As for the "Comando Vermelho", the convictions resulting from the National Security Law had a strong influence on its origins. In the Ilha Grande Prison, prisoners were divided territorially, according to their affinities, into groups known as "phalanges". In 1979, the prison was strongly controlled by the so-called "Falange Jacaré", a group well known for the atrocities committed against other prisoners, such as rape, prostitution, sale of other inmates for sexual purposes and murder. The only declared enemies of this phalange were those locked in the so-called "fundão", who were practically isolated from the rest of the prison, incommunicable. It was precisely there that, strongly influenced by left-wing organizations, the so-called "Falange LSN" was formed, which would later become the "Comando Vermelho" (Amorim, 1993, p. 24-25, Shimizu, 2011, p. 118-119).

With the political prisoners, the inmates learned several techniques to increase the effectiveness of their ventures, such as escape techniques, organizing more elaborate robberies and assembling more effective devices at home. But, even more importantly, they realized that if they joined forces, they would have a strong power to gain traction with the prison administration, especially considering the possibility of joining forces with the political prisoners, with whom the military regime was concerned, since any harm to their physical integrity could attract the attention of foreign agencies, such as Amnesty International. Thus, several hunger strikes were organized, which resulted in improvements for the inmates (Amorim, 1993, p. 27-44).

With the emergence of several demonstrations calling for an end to political crimes, those convicted under the National Security Law chose to distance themselves from common prisoners, forming an isolated and virtually incommunicado group. They aimed to draw the attention of

[6] "Art. 27. Assaulting, robbing or vandalizing a credit or financing establishment, whatever the motivation: Penalty: imprisonment, from 10 to 24 years" [free translation] (Brasil, 1969).

[7] "Thus, robbers of financial institutions were invariably prosecuted under the terms of the National Security Law, whether or not there was a political or revolutionary motive underlying the act. Thus, the dictatorship refused to recognize the political nature of the arrest of members of left-wing organizations, thereby denying the existence of political repression during the exceptional regime" [free translation] (Shimizu, 2011, p. 118-119).

international organizations to the existence of political prisoners in Brazil, not wanting to be confused with common inmates. However, this situation strained their relations with the latter group, a fact aggravated by the construction of a wall in the "fundão" sector and, later, by the approval of the "Amnesty Law"[8], which only benefited the political inmates (Amorim, 1993, p. 27-44, Shimizu, 2011, p. 119-120).

Although they were already separated from political prisoners, the common prisoners in the "fundão" sector had already acquired the necessary techniques to organize themselves, being known as "Red Phalange", due to their supposed political orientation (Shimizu, 2011: 121), and the press began to call them the "Red Command" – Comando Vermelho (Lima, 2001, p. 95).

The most important episode, however, for its emergence, occurred on September 17th, 1979, when, after a failed escape attempt, which did not materialize due to a denunciation by another prisoner, the Comando Vermelho ordered an attack as a form of revenge, in an episode known as "Saint Barts' Night", taking control of the Ilha Grande Prison after eliminating the main leaders of the so-called "Falange Jacaré" (Amorim, 1993, p. 45-50).

The Comando Vermelho's policy was then established in the Ilha Grande Prison, an ideology that ended up spreading throughout the prison system in Rio de Janeiro, which was aggravated by a poor judgment made by the government of Rio de Janeiro, who transferred inmates due to the incident[9]. As a result, the group's policies gained notoriety, increasing its number of members (Shimizu, 2011, p. 122-123, Amorim, 1993, p. 50-51).

It is important to note, therefore, that contrary to what is commonly reported in the press, Comando Vermelho was not always directly linked to drug trafficking, having been founded, on the contrary, with clear

[8] "Art. 1. Amnesty is granted to all those who, in the period between September 2, 1961 and August 15, 1979, committed political crimes or crimes related to these, electoral crimes, those who had their political rights suspended and employees of the Direct and Indirect Administration, of foundations linked to public power, employees of the Legislative and Judicial Powers, the Military and union leaders and representatives, punished based on Institutional and Complementary Acts" [free translation] (Brasil, 1979).

[9] As Carlos Amorim explains, the group's slogans are: "1. Death for anyone who assaults or rapes their comrades; 2. Incompatibilities brought from the streets must be resolved on the streets, because rivalry between gangs cannot disrupt life in prison; 3. Violence only to try to escape; 4. Permanent fight against repression and abuse" [free translation]. He also explains that shortly after, the group's official slogan was created: "Peace, justice and freedom!", which to this day can still be found on walls and trains in the capital of Rio de Janeiro (Amorim, 1993, p. 50-51).

objectives of "self-defense" for the inmates, who saw in unity among themselves a possibility of improving conditions in prison[10].

Primeiro Comando da Capital - PCC

Just as had happened with the Comando Vermelho, the so-called Primeiro Comando da Capital (PCC) emerged within the prisons of São Paulo, with the main purpose of protecting prisoners from the inhumanities committed against them by other inmates and also by the police and prison administration.

It originated in the Penitentiary Readaptation Center attached to the Taubaté Custody Center, in the state of São Paulo, popularly known as "Piranhão", because it housed the most dangerous convicts in the state. This establishment soon gained notoriety for being one of the cruelest in the country, due to the atrocities committed there, such as daily beatings, isolation of inmates, difficulties in contacting lawyers and family members, and torture (Teixeira, 2017, p. 119-126). As Camila Caldeira Nunes Dias explains, the establishment operated similarly to a "strong cell", with inmates locked up for up to 23 (twenty-three) hours a day and allowed to take short sunbaths in small groups, with communication between them prohibited. Visits were limited and prisoners were beaten with iron bars, and they also received poor and scarce food. Hygiene conditions were precarious, with insects being inserted into food and the toilet flushed by prison staff from outside the cell at their discretion (Dias, 2011, p. 101-102).

It was in this context that, in 1993, the founding pact of the PCC was sealed, with the aim of seeking better prison conditions by directly combating those primarily responsible for the situation at the time. Among the faction's declared objectives, taken from its own "manifesto" promulgated at the time, was the deactivation of the Taubaté Custody House and the protection of inmates in light of the recent events at Carandiru[11].

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[10] According to Bruno Shimizu, it was only under the leadership of Rodrigo Lemgruber, in the 80s and early 90s, that drug trafficking activity stood out in the group (Shimizu, 2011, p. 123-124).

[11] "13. We must remain united and organized to prevent a similar or worse massacre from occurring again than the one that occurred at the Detention Center on October 2, 1992, where 11 prisoners were cowardly murdered, a massacre that will never be forgotten in the conscience of Brazilian society. Because we at the Command will change the inhumane prison practices, full of injustice, oppression, torture, and massacres in prisons. 14. The Command's priority is to pressure the

The first episode of the inmates' revolt became known as the “battery”, when they spent one week banging on their bars in protest against the beating of a newcomer (Jozino quoted by Latuf, 2015, p. 124-125). As a result, the inmates obtained some improvements, including permission to play soccer. It was during one of the championships organized within the establishment that a team was formed with inmates from the state capital, which became known as the PCC (Primeiro Comando da Capital). It was from this union that the organization emerged, which went beyond the sports sphere and sought to obtain better conditions for the inmates (Jozino quoted by Shimizu, 2011, p. 135).

As *Bruno Shimizu* explains, despite the size and complexity that it acquired, the public authorities initially adopted a defensive position, denying any speculation in the press about the existence of a group that controlled the prisons in São Paulo. This situation was only changed with the mega-rebellion that occurred in 2001 (Shimizu, 2011, p. 138-139).

According to *Camila Caldeira Nunes Dias*, in that year, using cell phones as the main means of organization, the group promoted a rebellion that affected 29 (twenty-nine) prisons in the State of São Paulo, which resulted not only in direct damage, namely deaths, injuries and damage to public and private property, but also in the dissemination of the PCC and its ideology (Dias, 2017, p. 171). It is estimated that the number of rebels was close to 28,000 (twenty-eight thousand prisoners), in 19 (nineteen) different municipalities (Porto, 2007, p. 75).

In May 2006, however, an even larger rebellion occurred, once again organized by the PCC. On this occasion, between the 12th and the 20th, approximately 73 (seventy-three) prisons rebelled and 439 (four hundred and thirty-nine) people died. These deaths were also accompanied by waves of violence and attacks against police officers and prison guards, private buildings, buses and civilians (Camilo, 2009, p. 63). It is speculated that the uprising only ended after an agreement between the faction's leaders and public authorities (Souza, 2007, 230-231), being also speculated the existence of a possible arrangement regarding a division of internal control of the prisons, transforming the faction into a private manager of them (Caldeira quoted by Shimizu, 2011, p. 144).

State Governor to deactivate that Concentration Camp "attached" to the Taubaté Custody and Treatment Center, from which the seed and roots of the command emerged, amid so many inglorious struggles and so much atrocious suffering” (Folha Online, 2001).

Criminological perspectives on criminal organizations

The previous chapter sought to explain the political and social context in which the two largest Brazilian criminal organizations emerged, the PCC and the CV. The PCC was created with the purpose of dismantling the "Piranhão" — a custody unit identified by prisoners as a place where acts of torture were routinely practiced — and also as a way of uniting the prison population in order to prevent tragedies such as the "Carandiru massacre" from happening again. The CV, on the other hand, developed during a period of military dictatorship, in which antidemocratic state practices prevented any contact between prisoners and the rest of society.

Therefore, it is not wrong to say that the organizations' objective was to safeguard rights, with the practice of crimes being a contingent activity that should not be confused with the purpose of these groups. The creation and dissolution of Brazilian criminal organizations is a recent phenomenon, which is why criminological studies on them are still scarce.

However, other groups dedicated to criminal activities have already been studied in different historical contexts. The criminological school that seeks to analyze such organizations is the "group criminality", and has been present since the Italian positive school, the delinquent subculture and the labeling approach.

Regarding the Italian positive school, Cesare Lombroso understood that the association of delinquents "brings forth a malignant ferment" that highlights the individual's savage tendencies. It was understood that the objective of such associations was, almost always, the appropriation of others' property, that is, the grouping would serve to confront state protection. In his research, Lombroso also mentions the Italian criminal association called "Camorra", characterized as a group of prisoners and ex-prisoners, formed in small groups, independent of each other, but subject to a hierarchy (Lombroso, 2013, p. 185-186).

Lombroso's considerations provide initial notions for group criminality, but they were still far from delving into the subject in depth. Enrico Ferri, also from the Italian positive school, admits the existence of non-biological factors in the act of delinquency. For the author, the occasional criminal would be subject to being led by the environment to criminal practices (Ferri, 2001, p. 40).

Despite the additions brought by the Italian positivists, it is with the sociological schools of the consensus in criminology that a more in-depth study of group criminality emerges, mainly with the investigations of *Albert Cohen* on the delinquent subculture. *Cohen*, when studying crime in the United States, identified that juvenile delinquency resulted from the

impossibility of young people from lower social classes to achieve the American dream. Those young people internalized the idea of the "ethics of success" and were in a sprint for social progression in a class-based society in which progress was extremely unlikely (Dias & Andrade, 2013, p. 294-295). That way, poor young people become frustrated by their failure because since they were unable to achieve "success."

Subcultures then emerge from the frustration of these young people in not being able to achieve the values imposed by society, leading to an inversion of the polarity of social values. In other words, there is a denial of the values of a falsely meritocratic society. The delinquency of subcultures does not occur due to the supposedly deviant values of the underprivileged classes, but rather as a consequence of the pressures and demands on the lower classes, who do not have the same financial conditions as the more powerful ones. According to *Cohen*, the basis for the violent and destructive behavior of the crowd lies in the preexistence of unresolved tensions, as well as a period of "grinding" during which a set of common feelings is developed and reinforced (Cohen, 2005, p. 55-56).

Since the theory of delinquent subcultures emerged from an analysis of young Americans in the last century, we understand that it would not be appropriate to apply it directly to explain the criminality of Brazilian criminal organizations. As it was already demonstrated, those groups emerged as a form of defense for prisoners against rights violations, and not as a rejection of dominant social values.

It is also worth mentioning another criminological school that sought to analyze group criminality, namely the labeling approach. According to this theory, deviant behavior would be a creation of society, in such a way that the elite ends up deciding what behaviors it considers acceptable and, on the other hand, criminalizes undesirable ones. The so-called "outsiders" would therefore be deviant groups that disobeyed the behaviors imposed by society (Becker, 2008, p. 29). It seems to us, however, that this approach would also not be adapted to the phenomenon of criminal organizations, although they are characterized as marginalized groups in society. This is because their primary purpose - at least the original one - would not be criminal practice, but rather the self-defense of incarcerated individuals.

In order to solve this issue, *Bruno Shimizu* analyzes criminal organizations based on their elements of solidarity and gregariousness. Using a psychoanalytic approach, he draws a connection based on Freudian mass psychology. According to the author, solidarity is observable in criminal organizations through the standardization of egos, consisting of relationships of affection between members, justifying their maintenance. Gregariousness,

in turn, would be the tendency to group together, an instinct responsible for making man a collective animal (Shimizu, 2011, p. 165).

It is worth noting that group psychology and ego analysis were analyzed by *Sigmund Freud*, aiming to explain how an individual behaves when he or she is part of a mass, that is, a group of people focused on a specific purpose, even allowing him or her to commit cruel, brutal and destructive acts for the sake of the collective, giving up his or her individuality (Freud, 1996, p. 85).

Brazilian prisoners are subject to situations of extreme human degradation resulting from prison overcrowding and state abuse. The environment in which they live is conducive to revolt and the need to assert independence, which occurs in defiance of the social values responsible for the legitimacy of the functioning of the penal and penitentiary system (Shimizu, 2011, p. 188).

From this perspective, the State assumes the role of a traumatizing agent, while the criminal organization can be seen as a way of living with everyday trauma. In situations where the State assumes that role, imposing a complete refusal on the subjects and acting with unspeakable violence, its paternal image merges with the memory of violence. In a remodeling of the Freudian myth, therefore, the children, identified by hatred, begin to conspire the death of their father. This creates a mass susceptible to all the collective psychic phenomena described by Freud (Shimizu, 2011, p. 188-194).

Few examples seem clearer than the Brazilian prison system when it comes to demonstrating the potential of the State to become a traumatic agent, since the "war against criminals" carried out by the Brazilian State ends up operating its penal system almost as a genocidal apparatus (Shimizu, 2011, p. 195).

It is against this "tyrannical" State that represses the people subjected to it that the founders of the criminal organizations sought to impose themselves while planning the founding of the resistance groups (Shimizu, 2011, p. 1999). The pro-incarceration policy adopted in the country and the degrading conditions of the Brazilian prison system are the origins of those groups, which are instruments of defense of the prisoners, who unite in the form of a mass, to resist the oppression of the "father".

However, once the organizations are formed, it is possible to observe within these groups the reproduction of several of the power structures against which the masses themselves rebelled. The organization takes the place of the "tyrannical" State, establishing an extremely rigid code of conduct, with brutal punishments for those in non-compliance (Shimizu, 2011, p. 1999).

The “PCC statute” is an example of this phenomenon. Structured in several articles, it must be obeyed by the members of the criminal association, thus resembling a law that must be followed by the members of a State.
A handwritten copy of the statute was recently seized at the Monte Cristo Agricultural Penitentiary. Part of its text is quoted below:
Bylaws:
Article I - All members must be loyal and respectful to the PCC.
Article II - Always fight for peace, justice, freedom, equality and unity, aiming at the growth of our organization, always respecting the ethics of crime.
Article III - All members of the command have the right to express their opinion and have the duty to respect everyone's opinion, and within the organization there is a hierarchy and discipline to be followed and respected. Any member who tries to cause division within the command by disrespecting these criteria will be excluded and decreed.
Article IV - We make it clear that we are not members of a club, but rather members of a criminal organization that fights against oppression and injustice that arises on a daily basis and tries not to affect it, therefore the command does not tolerate complacency and weakness in the face of our cause. [...]
Article XVII - Any member who leaves the organization and joins another faction or rats out someone related to the command will be sentenced, and anyone who messes with our family will have their family exterminated. The command has never messed with anyone's family and does not accept it, but traitors and rats will not have peace. No one is forced to remain in command, but the command will not be betrayed by anyone [free translation](Macedo, 2017).

It is immediately clear that there is a hierarchical organization that tries to reproduce the state model. The criminal organization, created to resist the oppressive state, has a statute with rules that are much stricter than those imposed by the latter, with brutal punishments not only for those who fail to comply, but also for their families. Such a model, in fact, ends up intensifying even further, as Shimizu rightly observes, the lack of freedom of the members of the mass (Shimizu, 2011, p. 200).

Critical analysis of the solution proposed by the Brazilian Government

As explained above, the issue of criminal organizations is not new in Brazil. It has been developing for several decades due to, among other reasons, the poor conditions in Brazilian prisons, which are overcrowded and poorly structured. One of the most recent manifestations of this crisis, as mentioned above, were the conflicts in early 2017 in prisons in the north and northeast of Brazil, which resulted in dozens of deaths.

As a solution to the problem, the Brazilian government proposed, through its Minister of Justice at the time, the construction of new prisons, seeking to create new vacancies and redistribute inmates. In this sense, it was intended to allocate R$200,000,000.00 (two hundred million reais) for the construction of 05 (five) prisons, each with an approximate cost of R$45,000,000.00 (forty-five million reais) and housing between 200 and 250 inmates each. The idea was that these establishments would serve highly dangerous criminal leaders. There would also be a transfer of approximately R$800,000,000.00 (eight hundred million reais) to the states of the Federation, so that they can build state prisons (Cipriani, 2017).

This would not be, in our view, the most appropriate solution to the issue. As *Thomas Mathiesen* explains, although there are many divergences regarding the alternatives to deprivation of liberty, with some advocating abolition, others a reduction of the system and some prison reform, at least within the scope of critical doctrines there is unanimity regarding one point: the refusal to build new prisons. According to the author, prison would be a giant on clay ground, since, despite appearing to be a solid system, it actually has deficient pillars, which would be the very objectives of incarceration, which prove, in practice, to be totally irrational (Mathiesen, 2005, p. 7)[12].

Among the arguments usually presented to justify incarceration, that of rehabilitation or intimidation of the individual is disproved by empirical studies that prove that prisons, contrary to what is intended, have counterproductive effects. In this sense, the study by *Lloyd W. McCorkle* and *Richard R. Korn* states that the prison system provides the incarcerated with a way of life that prevents them from internalizing and converting

[12] The author explains that "The Achilles heel, the mudslide of the prison, is its utter irrationality in terms of its own stated goals, a bit like the unproven witch hunts. In terms of its own goals, the prison contributes nothing to our society and our way of life. Report after report, study after study, in their dozens, hundreds and thousands, clearly show this" [free translation] (Mathiesen, 2003, p. 89-90).

social rejection into self-rejection. On the contrary, it encourages the prisoner to further reject those who harbor this feeling towards him (McCorkle, Korn quoted by Mathiesen, 2003, p. 90).

It is also important to highlight that, according to *Mathiesen*, the idea of rehabilitation is as old as prison itself, but it has different approaches from time to time, according to the market interests of the period. Thus, it can be seen that rehabilitation models are not designed according to the needs of the individual. An example of this is that in the 1600s, the "principle of profitable work" was defined according to the mercantilist and economic policies of the time. Currently, however, the "principle of discipline and education" as forms of rehabilitation is the result of the need to respond to the crisis in the penitentiary system, making it necessary to prove to society that the State is still capable of maintaining order within prisons (Mathiesen, 2006, p. 42-43).

With regard to general prevention, another argument commonly used to defend incarceration, it is important to clarify, initially, that the possibility of punishing a person in order to serve as an example to third parties, preventing them, who had no connection with the initial act, from committing crimes is morally questionable (Mathiesen, 2006, p. 76). Furthermore, it should be noted that the idea intended by general prevention is not transmitted directly to society, always depending on the media to perform this function. However, these media are usually configured by large business corporations, with economic and audience interests[13]. This means that, in the filtering processes (selection of the most sensationalist and dramatic news) and focus (highlighting news in which these characteristics are more pronounced), there is an evident distortion of the communication to be transmitted to the general public, and it cannot be guaranteed that general prevention has its effects at the levels and within the desirable and appropriate limits (Mathiesen, 2006, p. 71-73).

It should also be stated, according to empirical research cited by *Mathiesen* and *Schumann*, that the preventive effects of incarceration on third parties are very modest in terms of the increased probability of imprisonment and are practically non-existent in relation to the severity of the sentence. Furthermore, the preventive effects appear to be stronger in groups of people who, in general, are already law-abiding, and are statistically less "predisposed" to criminality (Schumann quoted by Mathiesen: 2003, p. 91).

[13] "…the interests in question may be summarized as a combination of news and sales interests: a combined emphasis on striking news and news that sells" (Mathiesen, 2006, p. 71)

Another argument deconstructed by *Thomas Mathiesen* is that incarceration would be beneficial because it deters offenders. The author explains that this detention can be divided into two models: selective detention, which would be the prediction of high-risk violent offenders based on their background, and collective detention, which involves the use of detention against entire categories of likely repeat offenders. For the author, the first category is extremely difficult, especially due to the so-called "false positives" and "false negatives", that is, prediction errors (Mathiesen, 2003, p. 94-95). The result of such mistakes would be the imprisonment of several people who would never commit new crimes, since it is a hypothetical future[14].

In turn, collective prohibition, in addition to having its morality highly questioned, shows very modest results, according to studies by the "Criminal Career Research Panel". Between 1973 and 1982, in the United States, the number of prisons doubled, while the crime rate did not decrease, but increased by 29%. It is also reported that if these prisons had not been built, the rate would have been only 10% to 20% higher. This represents a very small gain for such an investment, in addition to being easily circumvented, since generations of criminals are renewed (Blumstein quoted by Mathiesen, 2006, p. 136-137).

Finally, the claim that imprisonment is a way of balancing justice, specifically between the weights of the reprehensible act and the punishment, must be challenged. According to the author, with the replacement of corporal punishment by prison sentences, punishment began to be measured by the time taken from the subject. However, for this to happen, two premises are necessary: that time is an objective entity, equal for everyone; and that it can be evaluated on a scale of rationality, with an absolute zero. According to the author, these two premises are false, since sufficient prison time is not intersubjective, but rather varies from person to person. Furthermore, prison time is not a rational scale,

[14] "To Christie and many others the problem of the false positives-the fact that many who are actually not dangerous will have to be detained if we are to detain a few who are - constitutes a serious question of principle: what is the justification for locking up many who are actually not dangerous in order to secure ourselves from a few who are?" (Christie quoted by Mathiesen, 2006, p. 87). The author also explains that: "The problem is this: what is the basis, in terms of principles, for the sentencing to prison for acts which otherwise, without the sentence, may or will occur in the future? The prevention of future acts is here not just a more or less vaguely formulated goal, but the explicit grounds or reason for the particular sentence. What is the basis for grounding a sentence in future acts?" Mathiesen, 2006, p. 87).

since it is characterized by the individual's suffering and the imposition of force by the government, and these measures cannot be quantified in a proportional manner (Mathiesen, 2006, p. 136-137).

It can be seen that prison is not justifiable by either the theories of individual prevention or social defense, and is, in its own purposes, a fiasco. According to *Mathiesen*, denial or ignorance of this situation occurs in and due to three spheres: firstly, in the public sphere, influenced especially by the mass media. For the author, the information passed on by the prison system is systematically filtered and distorted by the press. If the content of the media stopped being merely superficial entertainment and was concerned with the critical formation of its audience, there would be positive results in the other two layers to be mentioned, since the first, in the author's opinion, is the most important and the one that exerts the most influence (Mathiesen, 2003, p. 101-105)[15].

The second scope of denial would be the institutions specifically focused on preventing and persecuting crime, such as the police, courts of justice and prison staff. Prison system administrators defend it for three reasons: either because they have been co-opted by the system, becoming part of it; out of loyalty to it; and because of the rigid system of discipline to which they are subjected (Mathiesen, 2003, p. 98-99).

Finally, the influence of particular groups, such as research groups and academia itself, is undeniable. Supporting his thesis, *Mathiesen* explains the concept of "doxa", which would be a suffix designated to describe something that is unquestionable during a certain period of time. Directly related to it, "orthodox" ideas would be those in which the details are discussed, but only the most superficial ones, keeping the basic premises unchanged, while in "heterodox" ideas, fundamental issues about the basic premises are raised. The problem is, according to the author, that the academic stratum that is best informed about the harmful effects of the prison system is systematically migrating towards the realm of orthodoxy and even doxa, as opposed to the critical doctrine of the 1970s. (Mathiesen, 2003, p. 99-101).

That being said, the Brazilian policy of building new prisons in order to control the penitentiary crisis and remedy the historical problem of

[15] "The prison is a profoundly irrational system in terms of its own stated goals. The difficulty, however, is that this knowledge is largely secret. If people really knew how poorly the prison, like other parts of the criminal control system, protects them—indeed, if they knew how the prison only creates a more dangerous society by producing more dangerous people—then a climate for the dismantling of prisons would necessarily begin now" [free translation] (Mathiesen, 2003, p. 95).

controlling criminal factions in these spaces is shown to be irrational, since, as demonstrated, not only are they a favorable environment for the emergence of those groups, due to the constant disrespect for human rights that are committed in them, but also because incarceration itself is an institution that is increasingly less sustainable as a way of solving crime.

Conclusion

As demonstrated in this article, the issue related to criminal organizations operating in Brazilian prisons has been discussed for a long time, but it is apparently far from being resolved. On the contrary, as observed at the beginning of 2017, there has been a strengthening of these groups, which have already gone beyond the walls of penitentiaries and exercise control over various areas of activity in communities in large cities.

In response to these massacres, resulting from clashes between rival groups, the Brazilian government announced the transfer of a significant amount of funds for the construction of new prisons, ensuring an increase in the number of places and the redistribution of inmates. However, although the relationship between the emergence of criminal organizations and the poor conditions in which inmates are held is well-known, we do not believe that this solution is the most appropriate for the case.

In the terms set out above, firstly, it was clear that prisons are the ideal setting for the emergence of those groups, given the already highlighted poor conditions in which they live and the constant need to unite with other inmates, in order to be less vulnerable to the risks to which they are subjected in prison, whether from harm to their physical safety perpetrated by other inmates or by the administrators and employees of the establishment. In this sense, it is very common, for example, for newcomers to prison to seek, from the very beginning, to join an organization, even if they had no prior interest in getting involved with organized crime, but rather, with the sole and exclusive aim of surviving, protecting themselves from attacks and rape.

Furthermore, it has become clear that the prison system as it is currently organized is a total failure, since it does not fulfill its prevention and resocialization functions, but rather often has counterproductive effects, pushing young people who would otherwise not commit crimes further into the “world of crime”, or causing them to commit crimes even more serious than their initial ones.

Therefore, although there are constant disagreements about which paths should be followed regarding alternatives to prison, there is a consensus, at least within the scope of critical doctrine, that prisons as a whole have

failed, and it is therefore irrational to believe that building new ones will solve the problem of organized crime. On the contrary, it is undeniable that, in the current context of the Brazilian prison system, incarcerating any person, regardless of their social status, criminal record or conviction, makes them a potential future member of a criminal organization.

Thus, it is clear that the construction of new prisons should not be encouraged, so that the large amount of money allocated for this purpose by the Brazilian government could be applied to more effective measures to address the issue, such as social work in communities, aimed at meeting their basic needs, which in the absence of state support, are often met by groups; and, mainly, improving the quality of life of those already incarcerated, ensuring that they receive, in fact, humane treatment and respect for their fundamental rights and basic needs, in addition to internal activities that effectively help in their resocialization, guaranteeing access to education, culture, entertainment and work.

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Review Paper

Criminological and Linguistic Characteristics of the Slang of Convicts

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Convict slang is a non-standard variety of language. As a kind of "language within a language", its main features are the incomprehensibility of the formal system in prisons and the creation of conditions for unhindered communication between convicts. The subject of the work is the analysis of the linguistic and criminological characteristics of convict slang. During this analysis, the convict slang shall be observed in the context of the resistance that the convict community, as an informal system, provides to the formal prison system and its representatives. Since convict slang cannot be viewed in isolation from the informal code of convicts, the paper also presents its basic characteristics. The subject of the work defined in this way clearly explains its objective. Studying the slang of convicts can contribute to a better understanding of the convict community, its penological characteristics, as well as criminogenesis within the prisons themselves, which is a prerequisite for improving treatment while serving a prison sentence.

Keywords: *Convict slang, Convict Community, Criminogenesis, Penological Treatment*

Introductory remarks

In the textbook literature in the field of criminology, as a separate, complete and comprehensive science, with a specially determined subject, method and theoretical basis of research, one separate part, or even several separate parts, depending on the author's determination, are always devoted to questions of the causation of criminal behavior, as individual phenomena, or criminality as a mass, social phenomenon. All these theoretical foundations are most often divided according to the history of their origin, respecting the order of their appearance, or according to geographical, or

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spatial criteria, where referring to strict European or American criminology, most often carries with it the risk of insufficient understanding of their mutual conditioning. Observing, through many years of pedagogical practice, the way in which the academic population approaches the study of criminological theories, on the one hand, as well as the constant insistence on collecting statistical indicators of criminological/victimological phenomena, on the other hand, it seems that the thread of sociological reflection on the causes of the origin of criminality, their unraveling, and proposing adequate measures for their suppression has been lost (Kostić & Mirić, 2016, p. 430). Looking at the social factors that cause or create the conditions for the occurrence of criminality is extremely important for understanding the entire process of criminogenesis, primarily due to the multifactorial conditioning of criminality itself. It is precisely the sociological approach to the study of criminality that is made possible by forensic linguistics and the study of convict slang, as one of its main tasks, which shall be discussed in more detail later in the paper.

Forensic linguistics is a branch of linguistics that deals with the analysis of language issues relevant to court proceedings. Within forensic linguistics there is also a special discipline that studies the language of criminal groups and individuals with delinquent behavior, with the objective of easier detection of criminal acts and their perpetrators. This is criminal linguistics. Criminal linguistics is a type of criminological scientific discipline that deals with the discovery, study and interpretation of the language and script used by the perpetrators of criminal acts, especially the interpretation of certain usable terms and expressions, with the objective of better and more successful detection of the commission of intended and planned criminal acts, i.e. to prove already committed criminal acts (Jovašević, 2006, p. 263). In the simplest terms, forensic linguistics studies the application of linguistic knowledge and techniques in the elucidation of those criminal acts committed exclusively by the use of language. Forensic linguists can help solve all those cases where the meaning of a word, sentence or text, the author of the text or the speaker is in dispute, regardless of the type of dispute (criminal or civil), court proceedings (pre-criminal, criminal or appellate), or the party engaging it (Manojlović & Nikolić-Novaković, 2009, p. 109). Unfortunately, the potential of this scientific discipline in Serbia is not used enough. There are many reasons for such a situation. One of the most important is the fact that there are very few experts in this field in our country, and that, according to the information we have, it is not studied at any of the faculties in the Republic of Serbia. The fact that forensic linguistics still does not have its place in

legal and especially in criminal and police theory and practice in Serbia speaks for itself. The absence of specialists in this field in the police is a consequence of the inability to understand what is meant by open problem systematization for the progress of modern police activity. The introduction of modern methods to fight against crime necessarily requires the employment of specialists in this field. Transcribing or describing the intercepted conversation from electronic form to/on paper by officers of other profiles, and not forensic linguists, does not contribute to the efficiency of either the criminal or the criminal-law procedure (Manojlović & Nikolić-Novaković, 2009, p. 126). All of these are areas where the work of forensic linguists is extremely helpful to the police, prosecution and courts in the fight against increasingly sophisticated forms of crime, such as various forms of organized or high-tech crime.

Deprivation of liberty and isolation in a special institution lead to a series of psychological consequences for convicted persons. While serving their sentence, convicts are denied freedom of movement, they are subjected to a strictly formal system of life in an institution that they cannot influence, they are separated from family members, relatives and friends, all of which leave deep consequences for most convicts (Mirić, 2017, p. 38). Of particular importance is the study of convict slang. Slang is a non-standard special speech of a certain group of people (Vujaklija, 1986, p. 308). Convict slang is a non-standard variety of language. As a kind of "language within a language", its main features are the incomprehensibility of the formal system in prisons and the creation of conditions for unhindered communication between convicts. The subject of the work is the analysis of the linguistic and criminological characteristics of convict slang. During this analysis of convicts, the analysis of slang shall be observed in the context of the resistance that the community of convicts, as an informal system, offers to the prison system, the formal system and its representatives. The study of convict slang cannot be carried out without analyzing the informal code of the convict community, so some attention shall be paid to this issue as well. The subject of the work defined in this way clearly explains its objective. Studying the slang of convicts can contribute to a better understanding of the community of convicts, its penological characteristics, criminogenesis within the prisons themselves, which is a prerequisite for the improvement of treatment during the execution of the prison sentence. In the continuation of the work, the most important linguistic and criminological characteristics of convict slang shall be presented.

Linguistic features of convict slang

The basic function of convict slang is to ensure the secrecy of their mutual communication in relation to representatives of the formal system. Therefore, this slang belongs to the so-called cryptolects (Kubiček, 2024).[16] The most important linguistic characteristics of this non-standard language variety derive from this function. In the prison community, there are daily secret conversations between prisoners, which are mostly related to their criminal behavior and activities, the conditions of prison life and future plans. The topics of conversation are, apart from everyday events and activities from prison life, mostly related to political and sports events. Information about events outside the prison facility is available to them daily through the media and other means of information, visits by family, going on leave, etc. During the conversation, prisoners use numerous expressions that originated within the prison community - prison jargon. Based on the division of jargon, prison jargon can be classified as a subcultural type of jargon. The research and study of convict jargon is made much more difficult by its secrecy.

Apart from secrecy, there are numerous other characteristics of convict slang. One of them is identity-related, because through specific slang they try to preserve their identity, which is threatened due to numerous prison deprivations (Kubiček, 2024). In addition, through the slang of convicts, the innovativeness of the convicts themselves is manifested and the influence of foreign languages (English, German, Italian, etc.) can be observed in it, which makes it an important subject of studying for sociolinguistics, a scientific discipline that combines sociology and linguistics (Kubiček, 2024).

[16]Although the words slang and jargon are used in the paper as words whose meanings partly overlap, some differences should be highlighted. Namely, slang represents the specific speech of a group of people (Vujaklija 1986, p. 855), while jargon is the corrupt and incomprehensible speech of a group of people (Vujaklija 1986, p. 209). We believe that the language of convicts contains elements of slang and jargon, and that is how it was observed for the purposes of this paper. We are talking about different sociolects. It should be noted that there are numerous differences between cryptolects and other forms of jargon. Cryptolects have the function of secrecy and are commonly used by social groups exhibiting antisocial behavior, while jargon can have a number of other functions. Namely, jargon can also be related to non-criminal groups and refers to the way of speaking of certain professions (lawyers, doctors, sailors, masons, etc.). See more about different sociolects in Kubiček, 2021. pp. 9-82; Kubiček, 2024.

Nevertheless, certain linguistic characteristics can be distinguished that can be observed through the slang of drug addicts, which is often part of the slang of convicts. Narcotic slang also plays a significant role in the process of identification with the subculture of drug addicts and represents a kind of pass, or a sign of recognition in a group of drug addicts. The future drug addict, at the same time as he starts taking drugs, also accepts the drug addict slang, and the drug addict slang becomes his guardian. Nevertheless, the language of persons who abuse psychoactive substances is suitable for communication in front of undesirable persons, and ensures conspiratoriality in all types of communication, especially in telephone conversations (Savić & Macanović, 2020, p. 295).

The general rules of slang also apply in drug slang. Some of the rules applied are: secrecy (for example: white is cocaine), double wordplay (do you have a vespa - vespa is a vesparakseta/sleep aid), associativity, pejorativeness (the postman is a kangaroo), surrealistic compounds ("slogged cactus" or " sour head"), meaninglessness ("accidental rape"), sonority ("džidžibudžiti"), imagery ("crnjak" - a strong opium), contrast ("terrible" or "bloody" is wonderful). From a syntactic point of view, the sentences in the speech of drug addicts are short, practically elliptical, whose only objective is to convey the linguistic message as quickly as possible and thus reduce the possibility of detection and narrow the space for the action of the police and the judiciary (Mirić, 2020, p. 10-11; Mirić, 2016, p. 559-560; Mirić, 2017, p. 492-493). Although the slang of drug addicts does not differ much from the slang of other convicted persons in terms of linguistic characteristics, this type of slang is particularly characterized by its dynamism, which is reflected in the rapid change in the meaning of words, which is quite understandable considering the illegality of possessing narcotic drugs. With all this in mind, the observation of Angela Devlin, the author of the famous dictionary of prison slang published in 1996 entitled Prison Pattern - A dictionary of Prison Words and Slang, that "nothing changes faster in prison than junkie slang" seems quite justified (Devlin, 1996, p. 13). The slang of convicts is wider than the slang of drug addicts, since the slang of drug addicts is only one part of the slang of the wider convict community. In the following, the basic criminological characteristics of convict slang according to the available criminological literature shall be presented.

Criminological characteristics of convict slang

Similar to the aforementioned linguistic characteristics, the criminological characteristics of convict slang reflect their language, but are basically aimed at maintaining the coherence of the convict group itself, which allows for the smooth functioning of the convict community and the communication of its members. Knowing all the peculiarities of convict slang contributes not only to the prevention of criminality within institutions for the execution of criminal sanctions, but also to a better understanding of the process of criminogenesis itself. It should be emphasized that theoretical and empirical research on the slang of convicts in the Serbian-speaking area is still very rare. At this point, for the sake of illustration, some examples of convict slang will be listed, according to the results of research conducted by Savić and Macanović (2020):

- Director– *kaponja, glava, tata, Šerif Konjević, babo, Papa Štrumf;*
- Deputy director – *zamjenik Šerifa Konjevića, nije do mene*;
- Head of the guard – *super drot, glavni zvezdaš*;
- Guardd supervisor – *nasilnik, zvezdaš*;
- Guard – *ključar, žbir, drot, vucibatina*;
- Guard in the yard – *avlijaner;*
- Female educator – *rospija, beštija;*
- Male educator – *ćoško, smor, smlata, kvarnjak*;
- Social worker – *baba, Majka Terezija, socijalna jadnica*;
- Psychologist – *Frojd*;
- Admissions department – *karantin, odmaralište, rizort*;
- Scheduled conversations – *ispiranje mozga*;
- Unplanned conversations – *neplanirano ispiranje mozga*;
- Medical technician – *doktor Mengele*;
- Instructor – *Baltazar*;
- C ward (closed ward) – *kavez, kazamat, ceca;*
- Phone – *žica, veza, fontele*;
- Guardhouse – *paščara;*
- Solitary confinement – *samuraj, visinske pripreme, prdekana, buvara, staklara*;
- Clock – *čuka*;
- Therapy – *bombonice*;
- Hideout – *štek*;
- Watchtower– *čardak*;
- Room for an intimate visit– *soba za skok, vesela soba*;
- Homosexual– *curica*;
- Dagger– *šaber*;

·Baton – *čarobni štapić, Daliborka, maser, Halida*;
·Video surveillance – *veliki brat, oko*;
·Security officer– *garib*;
·Split– *zipa*;
·Prisoners– *robovi, miševi*;
·One month of imprisonment– *metar;*
·Walking circle – *avlija;*
·Room for work clothes and shoes – *smrdara, komora;*
·Parole Board – *igra na sreću loto, braća po profesiji, džeparoši, komisija za klepanje;*
·Corruption – *bakšiš;*
·Cigarettes – *garaci*;
·Cook – *mađioničar*;
·Laundry – *peglaona, ring*;
·Salary – *sića, socijala*;
·Beatings – *porcija*;
·Gym – *mišičana, čeličana*;
·To steal – *odraditi, ispaliti, zapaliti, šana*;
·Being caught – *pasti, zaglaviti*;
·Search – *pretres*;
·Baštovan – *person who grows marijuana;*
·Čistak – *good drug*;
·Dealer - *petty drug dealer*;
·Dop, dops, gudra – *drug;*
·Duvati – *smoking marijuana, inhaling glue fumes;*
·Džoint – *a hashish or marijuana cigarette (usually combined with tobacco);*
·Fleš – *euphoria after taking drugs;*
·Flipnuti – *become unbalanced under the influence of drugs;*
·Kriza, zikra – *discomfort during abstinence;*
·Raditi – *sell drugs etc. (cited according to Savić & Macanović, 2020, p. 296-298).*

The aforementioned research was created for the purposes of the scientific paper entitled "Prisoner jargon as a feature of criminogenic subculture", authored by Aleksandra Savović and Dr. Nebojsa Macanović. Since Dr. Macanović was employed in the Banja Luka Penitentiary for several years as an educator and was in daily contact with convicts who were serving their prison sentences in the aforementioned penitentiary, he had the opportunity to become familiar with the most important characteristics of the convict community, as well as with the peculiarities of their slang,

which, according to the author, represents the greatest advantage of such research.

Based on the above examples, it can be concluded that prison slang reflects the tendency to create language constructions in which words are given a different, completely new meaning, pejorative expressions dominate and almost all words refer to concepts that are part of everyday prison life. From a criminological point of view, a good knowledge of slang can contribute to the prevention of the commission of various criminal acts in institutions for the execution of criminal sanctions and to a better understanding of criminogenesis, which, in addition to the practical, has theoretical and scientific importance, especially when it comes to the development of penology and criminology.

Convict slang reflects a large number of alternatives for the same term. This characteristic is a necessary consequence of its secrecy because different morphemes and lexemes arise because the previous ones were discovered by the representatives of the formal system. This feature reflects the lexical diversity of this language variety. It should be noted that in the slang of convicts, you can also find words with a derogatory meaning, which can be explained by the different and often conflicting interests of the formal and informal system in institutions for the execution of criminal sanctions. Often, words acquire a completely new meaning in relation to the literary language, which can also be seen in the previously mentioned examples (Savić & Macanović, 2020, pp. 298-299). Convict slang is a very dynamic form of language, which makes it very challenging to follow and study. Convict slang can be traced back through history. Traces of the existence of criminal slang in the area of the former Yugoslavia (in the area of the Serbian and Croatian language areas) are as old as systematic philological research (Kubiček, 2021, p. 81). At the end of the 19th century (in 1897), a few words of criminal slang were recorded in the "Pokicijanski Glasnik". A decade later (in 1935), Munir Šahinpašić Ekremov's Riječnik Jugoslavenskih Šatrovaca appeared in Zagreb, as part of the Moderna Policija library. However, for a better understanding of this topic, the article " Zločinački ili Šatrovački Jezik" written by the lawyer Mato Malinar in 1912 in the Mjesečnik Pravničkoga Družtva in Zagreb, but which deals with a place of essential importance for the history of crime in the Republic of Serbia: Sremska Mitrovica (Marković, 2021, p. 146; Kubiček, 2021, pp. 81-82). According to our knowledge based on the literature and on the few researches on the slang of convicts in the language area of Serbian and Croatian languages, no differences have been established when it comes to slang in relation to different penitentiary institutions and in relation to whether it is about female or male convicts.

Slang always refers to a specific language, but comparative linguistic research in this area is also very important. Further research in this area would certainly contribute to the development of philology, linguistics, but also criminology and penology and provide valuable knowledge that could be used when creating various programs with the aim of resocializing convicts after serving their prison sentence.

The informal code of convicts and its influence on the functioning of the convict community

Finally, it is important to note that convict slang should not be observed and studied outside the informal convict community. A kind of informal "code" of behavior for convicts functions in it. In institutions for the execution of criminal sanctions, two systems function in parallel - formal and informal. And while the formal system functions in accordance with the corresponding legal norms, the informal system (community of convicts) functions according to some other, unwritten rules of a customary character. The study of that specific convict code is extremely important, not only for maintaining security in the institutions themselves, but also for achieving the objectives of convict treatment. Linguistically, the norms of this code are actually command sentences and are aimed at preserving the solidarity of the convicts themselves and resistance to the representatives of the formal system.

For the reasons stated, special attention should be devoted to the code of convicts, as a set of unwritten rules of the informal community of convicts. The development of the convict code is greatly influenced by the value of the convict community. The behavior of convicts is influenced by the value systems of the convict community itself. The most important values of the convict community are group cohesion and mutual solidarity. Values and norms conceived in this way aim to alleviate prison deprivations and frustrations and prevent the emergence of prison psychoses. All convicts strive to achieve the greatest possible degree of loyalty to the community, mutual solidarity, absence of violence and exploitation of convicts. The main objective is to preserve the stability of the prison society. Only in this way can the convict community and all its members be protected from the action of the formal system. In addition to this, the solidarity of convicts has an objective and subjective component, which is reflected in helping in need, in case of illness, old age or disciplinary punishment of community members. It is measured by the willingness to help other convicts in all incident situations that may arise in contacts with administrative authorities (Mirić, 2020, p. 181). Another significant value of the convict community

is the constant resistance to the prison staff and the refusal to carry out appropriate penological treatment. In this way, the convicted persons themselves express their negative attitude towards the values of the rest of society, thereby making their own resocialization more difficult. Closely related to this norm are the resistance to treatment and the rejection of society that occur in most convicts (Konstantinović-Vilić & Kostić, 2006; Mirić, 2020, p. 181).

Another important value is the effort to preserve personal autonomy. Namely, by coming to prison, convicts lose not only their freedom of movement, but also a whole series of social roles they had before. This often leads to feelings of worthlessness, lack of self-confidence and self-esteem. It is through the convict social system that they can regain some of their earlier influence in the community. There is a widespread belief among convicts that if they cannot change the conditions of life in prison, they can channel and control their actions and thus contribute to preserving some degree of integration.

No matter how paradoxical it sounds, one of the values of the convict community is the preservation of peace and stability in the prison. At first it seems that this is a socially acceptable value, but in reality it is not so. Preservation of peace here has a completely different objective, which is to prevent possible conflicts with the formal system, which would threaten the functioning of the community itself.

In addition to these collective values, certain individual values may appear in the prison community that are in conflict with the group values. Most often, it is about the desire of individual convicts to control and exploit others. Personal power is conditioned by the possession of certain material goods, which are a strong source of satisfaction for all convicts (drugs, mobile phones, money, etc.). On the basis of values, certain rules of conduct are created, which form a code of conduct for convicts, which has the force of customary rules among the convicts themselves. These rules can basically be reduced to the following:

A group of norms that regulate the relationship between prisoners and the administration. Disclosure of information to representatives of the formal system and exploitation of convicts among themselves is prohibited. In prison slang, these rules are expressed in the form of short requests such as "don't betray another prisoner", "don't bark", "don't do anything to the man behind his back";

Norms that control affects tend to reduce the conflicts between convicts to the minimum possible ("don't lose your head", "mind your own business");

Convicts should not exploit each other ("don't be an extortionist", "don't steal", "don't exploit");

Norms that affect the preservation of the dignity and morals of convicts ("don't be weak", "don't whine", "be a man");
Norms prohibiting recognition of the reputation of prison staff (cited according to Konstantinović-Vilić & Kostić, 2011, p. 227-228).

Although these norms are not written down anywhere, convicts must respect them. Opinio iuris is the protection of the values of the convict community. For the violation of the mentioned norms, there are punishments that are carried out by the members of the convict community themselves and range from ridicule and boycott, all the way to the use of physical force, all depending on which norm was violated (Mirić, 2012). This "code" also applies to convicts who did not participate in its adoption, which once again shows the customary nature of the aforementioned rules. In the analysis and interpretation of the norms of this "code", we can, once again, be helped by the determination of grammatical and linguistic rules. Namely, based on a brief description of some of its norms, it can be concluded that it is dominated by short imperative sentences. In this way, commands are transmitted to all members of the convict community in an extremely quick and simple manner, which affects the preservation of solidarity among its members.
As it was already said before, knowledge of the convict code is extremely important for studying the functioning of the convict community. The convict code is implemented verbally, since it represents a set of unwritten rules. As it is a linguistic creation, it is best to study it in direct contact with convicted persons. And that's exactly where a problem arises that makes research on the convict code and the convict community in general more difficult. Namely, it is very difficult to study the characteristics of the informal system "from the inside" with participation. That would be very dangerous for the researcher himself. This problem can be solved by carefully designing the research, its subject matter, sample objectives and appropriate research instruments. Research of the available criminological and penological literature has shown that there is a lack of theoretical and especially empirical research in this area. We believe this fact will be an inspiration for the work of numerous criminologists and penologists in Serbia in the coming time (Mirić, 2020, p. 185).
Prison gangs are very active in prisons, which are the main generators of violence. In addition to general characteristics, individual characteristics can be observed in the activities of convict gangs, depending on the country and the social milieu from which its members come. Each of these gangs has a specific code of conduct for its members. Such is the case with the gang in the USA - Texas Syndicate. Folsom State Prison in California is mentioned as the place where this gang of prisoners originated. The gang

was formed due to increasing pressure on certain convicts by the Mexican Mafia and La Nuestra Familia. Gang members have a built-in almost military discipline, being ready to be patient for days in order to retaliate at the right moment, for attacking gang members or for violating the gang code (Mays & Winfree, 2009, p. 208). According to Walker, during the formation of the gang, members could also be non-Hispanic convicts. Međutim, vrlo brzo došlo je do toga da članovi bande Texas Syndicate mogu da budu samo Španci. The code of conduct for members of this gang includes the following rules: 1) be a Texan; 2) always remain a gang member; 3) put the gang's interests above all else; 4) the gang is always right; 5) tattoo a gang sign; 6) never let gang members down; 7) respect other members and 8) do not give information about the gang to others (Kostić & Dimovski, 2013, p. 225). Even in the case of the code of this gang of convicts, norms aimed at maintaining group solidarity among its members and ensuring conspiratoriality in relation to representatives of the formal system are noticeable. Therefore, two codes of norms function in parallel in prisons: one is written, conventional, comes from the formal system and is directed towards the realization of the principles of rehabilitation and resocialization, and the other is unwritten, comes from the informal prison system and is directed towards resistance to the formal system. That is why it is considered deviant. However, a good knowledge of the informal code of behavior of convicts can contribute to the process of resocialization of convicts if positive elements are taken from it, which there certainly are. The convict code should be used to strengthen pro-social bonds among the convicts themselves. By strengthening convict self-management through its partnership with the formal system in achieving treatment objectives, many deviant and delinquent phenomena that occur behind prison walls can be suppressed. To many, this idea seems too utopian to be achievable. Skepticism related to the positive action of the convict community is certainly related to the fact that there are many more convict groups with antisocial actions compared to prosocial ones. Of key importance for the good functioning of any institution for the execution of criminal sanctions is the achievement of good communication between representatives of the formal and informal system despite the well-known "law of silence", as one of the basic rules of the code of the convict community. Communication with convicted persons represents the largest and most specific segment of re-educational work and is a prerequisite for achieving the ultimate goal - resocialization of the convicted person (Potkonjak, 2009, p. 180; Mirić, 2020, p. 183-184).

As a feature of the informal system, prisoner jargon has a certain role in the functioning of the prison and the way of communicating in it. At the same

time, it is inseparable from the formal system. Jargon, as well as the prisoner's code, have, we have established, several characteristics that relate primarily to the functioning of the informal system - it, first of all, represents communication that should be incomprehensible to those outside the group. Also, its objective is defense against the system, i.e. resistance to the system, because with it the prisoners try to overcome all the deprivations that are present during the serving of the sentence, but it also serves as a screen through which they come to an agreement when committing some illegal and punishable acts while serving their sentence (Savić & Macanović, 2020, p. 303; Ciechanowska, 2015, p. 8).

It is quite clear, taking into account the basic linguistic and criminological characteristics of the convict's slang, that its more complete study can contribute to a better understanding of the functioning of the convict's community and therefore to the realization of the purpose of the treatment and the successful resocialization of the person after serving the prison sentence.

Conclusion

The basic function of convict slang is to ensure the secrecy of their mutual communication in relation to representatives of the formal system. The most important linguistic characteristics of this non-standard language variety derive from this function.

In the prison community, there are daily secret conversations between prisoners, which are mostly related to their criminal behavior, prison life conditions and future plans. The topics of conversation are, apart from everyday events and activities from prison life, mostly related to political and sports events. Information about events outside the prison facility is available to them daily through the media and other means of information, family visits, leaves, etc. During the conversation, prisoners use numerous expressions that originated within the prison community - prison jargon. Based on the division of jargon, prison jargon can be classified as a subcultural type of jargon. The research and study of convict jargon is made much more difficult by its secrecy. Convict slang always refers to a specific language, but comparative linguistic research is also very important, and precisely future research into convict slang in different languages can be very important for the improvement of the program for the resocialization of male and female convicts while serving a prison sentence.

For the study of convict slang, the existence of an informal code of the convict community based on the values of the convict community is particularly significant. The study of these values can contribute to the creation of adequate penological treatments. A more complete study of

convict slang, the convict code and the informal community of convicts would contribute to the development of sociolinguistics, criminology and penology, and this process can be viewed much more widely, from the perspective of the development of social and humanities and scientific disciplines. Unfortunately, in our opinion, special attention was not paid to these issues in Serbia, and they represent a kind of scientific and professional challenge for scientists of social and human sciences and scientific disciplines.

Convict slang reflects the tendency to create language constructions in which words are given a different, completely new meaning, pejorative expressions dominate and almost all words refer to concepts that are part of everyday prison life. A good knowledge of the slang of convicts is the key to understanding the functioning of the convict community. But also much more than that. Slang reveals the ways and rules of communication between the convicts themselves, their way of thinking and value systems. Ensuring the conditions for the smooth functioning of institutions for the execution of criminal sanctions and the prevention of the execution of criminal acts within them therefore also implies understanding and monitoring language changes and the rules of slang of convicts. Achieving this objective requires a multidisciplinary approach and a synergy of the actions of experts from various sciences and scientific disciplines (penologists, criminologists, lawyers, sociologists, social workers, special pedagogues, andragogues, etc.). This approach has, apart from practical, theoretical scientific significance as it paves the way for the development of numerous sciences and scientific disciplines, primarily criminology and penology.

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Original Scientific Paper

Impact of the Prison Environment on the Process of Criminal Recruitment within Prisons

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Criminal recruitment within prison institutions represents a serious security and social problem. Prisons often become fertile ground for the expansion of criminal networks due to social isolation, lack of institutional support, and the presence of criminal leaders. The aim of this paper is to analyse the key factors contributing to criminal recruitment within prisons, with a particular focus on the role of social networks, hierarchical relationships, and prison conditions. This research uses a qualitative approach, with in-depth interviews with former convicts as the main data collection method. Six participants, who had served prison sentences in various institutions in Serbia and Croatia, were interviewed. Six respondents (five men and one woman) between the ages of 42 and 50 participated in the research. The data were analysed using thematic analysis in order to identify key patterns of criminal recruitment. The research results reveal that prison hierarchies and social networks play a crucial role in the process of recruiting new members into criminal groups. Prisoners without external support often become targets for criminal leaders, who exploit social isolation and the lack of resources in prisons as a means to recruit new members. Criminal recruitment in prisons can be reduced through reforms to prison policies, which include strengthening institutional support, improving prison conditions, and implementing specific rehabilitation programmes. This research emphasises the importance of preventing criminal networks within prisons by means of strengthening of institutional measures. Further research is recommended to analyse the role of social networks and hierarchical relationships among prisoners to identify key recruitment mechanisms. Additionally, it would be useful to examine the effectiveness of various interventions in different prison systems, as well as the long-term effects of support and rehabilitation programmes on reducing criminal networks within prisons.

Keywords*: Criminal recruitment, Prison environment, Social networks, Prison hierarchies, Prisoner rehabilitation*

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Introduction

Criminal recruitment can be described as the process by which criminal organisations attract and involve new members into their ranks using various methods. These methods include social, psychological, and economic pressure, as well as direct coercion, promises of economic benefits, protection, or compulsion through violence and threats (Carmona Bozo, 2019). This type of recruitment within the prison environment presents a significant social and security challenge in contemporary societies. Prisons, as total institutions, often become places where complex social networks and hierarchies are formed, which facilitate the recruitment of prisoners into criminal groups (Savona et al., 2017). This process contributes to the maintenance and expansion of criminal networks both inside and outside of prisons. Organised crime, gangs, and other criminal structures exploit prison conditions such as social isolation and lack of control to recruit new members, which jeopardises security and complicates the processes of rehabilitation and reintegration of prisoners into society (Pavićević et al., 2023).

The deprivation theory is based on the idea that specific conditions within the prison environment – such as the loss of freedom, security, privacy, and autonomy – lead to psychological and social pressure on prisoners, prompting them to seek support within the prison. Sykes (1958) describes how prisoners, faced with these deprivations, form alternative forms of social support within the prison walls. These groups not only provide a sense of belonging but also mechanisms of protection and survival in a hostile environment. In this context, criminal groups offer prisoners social security and status that compensate for the loss of identity and power. Prisoners who are isolated and lack adequate institutional support are more likely to join such groups, as it provides them with a certain level of autonomy and control over daily life within the prison (Sykes, 1958, as cited in Shammas, 2017). Research indicates that personality traits can significantly influence the intensity of experiencing prison deprivations. For example, prisoners with more pronounced traits of anxiety or depression may experience the deprivation of freedom and security more acutely, while those with stronger traits of confidence and independence show a higher level of adaptation to prison conditions (Ilijić, 2014). Prison life inevitably involves numerous deprivations that affect the physical and mental health of prisoners. Among the most common forms of deprivation are: deprivation of freedom, material goods, heterosexual relationships, independence, and security. These deprivations can significantly affect prisoners' perception of prison life and their adaptation to it (Ilijić, 2014).

The importation theory, developed by Irwin and Cressey (1962), is based on the assumption that prisoners arrive in prison with pre-existing values, norms, and criminal identities that were acquired in their previous social environments. Unlike the deprivation theory, which focuses on specific conditions within the prison, the importation theory emphasises that prisoners bring criminal values and behavioural patterns from the outside world, which facilitates their integration into the prison's criminal subculture. According to this theory, prisoners who have already took part in criminal activities and developed criminal connections before entering prison are more likely to join prison criminal groups. They recognise shared values and norms within the prison's criminal networks, which facilitates the process of recruitment and adaptation to prison life (Irwin & Cressey, 1962).

Both theories highlight specific factors that facilitate recruitment within the prison system. The deprivation theory explains how the need for belonging and safety is intensified in the context of isolation and uncertainty, while the importation theory suggests that prior experience and values play a key role in the integration of prisoners into criminal networks. These theories together offer a comprehensive explanation of the social and psychological mechanisms shaping the process of criminal recruitment in prisons, emphasising the need to strengthen institutional support and reduce the influence of criminal subcultures in prison.

Previous research indicates that criminal recruitment within prisons is the result of complex interrelations between prisoners, institutional norms, and living conditions within prison facilities. The study by Meško and Hacin (Meško & Hacin, 2018) documents the presence of prison subculture in Slovenian prisons, where hierarchy, opportunistic friendships, and secrecy are key elements that facilitate the recruitment process. Furthermore, they point out in their research that prison staff, although formally responsible for supervision, sometimes tacitly allow the maintenance of the subculture, recognising its role in maintaining order within prisons. The same study showed that prison staff often fail to respond to the emergence of informal hierarchies that help criminal groups operate within the prison, thus further exacerbating the problem of recruitment. Meško and Hacin state that prison staff allow the prison subculture to exist within "reasonable limits", as informal leaders help them to maintain order within the prison. This practice is based on the belief that a complete suppression of these informal systems would be ineffective, as informal leaders do not directly violate prison rules, but use subordinated prisoners to perform various tasks. This limited tolerance enables a certain balance in order management, although the subculture may also have negative consequences, such as the exploitation of more vulnerable prisoners.

Social isolation within prisons often leads to prisoners, especially younger and more vulnerable individuals, becoming easy targets for criminal groups that offer them protection or economic benefits. Fredman (Fredman, 2013) points out that the lack of social support and conditions for reintegration increases the risk of recruitment, further complicating prisoner rehabilitation and reducing chances for successful resocialisation. Additionally, according to an expert report on the quality of prison life in the Republic of Serbia, prisons face numerous challenges related to hygiene conditions, lack of adequate healthcare, and access to rehabilitation programmes, especially for female prisoners (Ćopić et al., 2023). These challenges further exacerbate social isolation and make the process of resocialisation more difficult, thereby increasing prisoners' vulnerability to criminal groups offering apparent protection and economic advantages. Identifying key factors that enable recruitment can contribute to the development of better strategies for the rehabilitation and reintegration of prisoners, thereby reducing the influence of criminal groups both inside and outside prisons.

Furthermore, prison culture often includes specific values, stratification systems, and informal economies that influence interpersonal relationships among prisoners. These cultures are often based on adapting to the prison environment, where recruitment into criminal groups may be one of the main mechanisms of adaptation. Stratification systems within prisons encourage hierarchical structures, where prisoners in higher positions recruit new members in order to maintain control and the distribution of illegal goods (Wooldredge, 2020).

Aims of the Research

The main aim of this research is to analyse the impact of various aspects of the prison environment on the process of criminal recruitment. The specific objectives include:

Investigating the role of social networks and hierarchies among prisoners in the recruitment process;

Analysing the impact of prison conditions, including legal and security measures, on the process of criminal recruitment;

Identifying key factors that support or hinder recruitment within prison communities;

Providing recommendations for the development of effective policies and programmes to prevent criminal recruitment.

Methods

The participants in the research were both male and female (five men and one woman), aged between 42 and 50 years, who had served sentences ranging from three months to twelve years for various criminal offences. Their experiences include a wide range of crimes, from transportation of illegal migrants and illegal drug trade to robberies and attempted murders. Special attention was given to the ethics of the research, ensuring that participants were fully informed about the research aims and that all responses were voluntary. Anonymity of respondents was guaranteed to ensure the their safety and freedom of expression. This approach allowed respondents to freely share their experiences, including the most sensitive aspects of life in prison, such as relationships with prison staff and criminal groups.

A qualitative approach was used for this research, enabling a deeper understanding of complex social phenomena such as the process of criminal recruitment within prison institutions. This methodology allowed for the exploration of subjective aspects and personal experiences of respondents, which could be overlooked in quantitative methods, as qualitative research enables the collection of rich, "thickly" described data, as well as the conducting of comparative analyses of different research environments. Data collection techniques, such as interviews, help researchers study micro-social phenomena and understand cultural interpretations of social interactions (Lamont & White, 2005). This method was chosen as it provides key information about respondents' attitudes and motivations, which is essential for studying identity and emotions. In this way, in-depth interviews allow a clearer understanding of how individuals interpret the complex social processes in which they have been involved, such as those in a prison environment (Della Porta, 2014).

Interviews with pre-defined questions were conducted with six former prisoners who had served sentences in different prison facilities across Serbia and Croatia. The interviews were organised in collaboration with the association "After the Rain" ("Posle kiše") from Kragujevac, which has been providing post-penal support to former prisoners for many years. The association facilitated contact with the respondents for the research, owing to the long-standing trust between the researcher and the respondents. This trust-based relationship contributed to the credibility of the collected data, allowing respondents to share their experiences more freely.

The interviews lasted up to 30 minutes, depending on the complexity of the respondents' experiences. All interviews, except for one, were recorded, as

consent for recording was not obtained for one interview. The collected data were later transcribed and subjected to thematic analysis to identify key patterns and themes related to recruitment into criminal groups. This approach allowed the researcher to gain a deeper insight into the motivations and social structures within prison institutions that may contribute to the recruitment process.

Sampling

A purposive sampling method was used, based on the selection of respondents according to predefined criteria, such as the length of their prison sentences and the diversity of their experiences. The researcher did not have complete control over the selection of respondents, as the "After the Rain" association provided contact with former prisoners who were considered willing to speak about events within the prison. The respondents in this research are represented by their initials.

Data Collection and Analysis

In this qualitative research, the following techniques were used for data collection and processing:
Semi-structured Interview: This data collection technique allowed pre-prepared questions to be adapted during the conversation, providing flexibility to explore deeper aspects of the respondents' experiences. In this way, the respondents had the freedom to describe their subjective experiences of recruitment into criminal groups in detail, while the researcher was able to follow unexpected topics that came up during the interviews.
Interview Transcripts: The transcripts of the interviews allowed for a thorough analysis of the data collected, providing the researcher with the opportunity to identify key themes and patterns in the participants' responses. These textual records were used for thematic analysis in order to gain a deeper understanding of the social and hierarchical relationships within prison institutions.
The focus of the interviews was on the subjective experiences of the respondents, including:
First experiences in prison, including emotional reactions and coping with the physical environment, which is often recognized as a key factor in recruitment into criminal groups.
Relationships with other prisoners and the role of prison hierarchies, which play a central role in recruitment processes.

Thematic analysis was used to analyze the collected data, which allowed for the identification of key patterns in the participants' responses. The analysis process involved the following steps:

Coding: The interview transcripts were carefully reviewed and coded according to themes such as prison hierarchy, criminal group dynamics, and the impact of prison conditions on recruitment.

Identification of Themes: The main themes identified in the data include social networks within prisons, the role of prison conditions in the recruitment process, and the influence of criminal groups and other informal groups on the daily life of prisoners.

Interpretation: The themes were analyzed in the context of the theoretical framework and existing literature to gain a deeper insight into the recruitment processes within prisons. For example, Sykes' deprivation theory provides a foundation for understanding how the lack of freedom and safety within prisons encourages prisoners to join criminal groups.

Results

As other authors have pointed out, prisons represent specific social environments where power and social relationships among prisoners play a key role in daily life and the spread of criminal activities. Research indicates that prisons operate as microcosms where informal hierarchies and social networks are formed, facilitating the recruitment of new members into criminal groups. For example, Savona et al. (2017) highlight that social isolation and economic insecurity in prisons create a fertile ground for recruitment, where organized criminal groups use prison conditions to gain new members. Similarly, Pavićević et al. (2023) emphasize that prisoners without external support often become part of prison criminal networks for the purpose of safety and access to resources, which helps maintain criminal networks even after prisoners are released into the community. Carmona Bozo (2019) further confirms that the social and economic needs of prisoners contribute to recruitment, as criminal groups offer selective incentives, such as safety and bare necessities for survival in prison.

These findings align with the observations made by Matijašević and Pavlović (2009), Meško and Hacin (2018), and Wooldredge (2020), which point to the specific hierarchical structures and prison subcultures that support the formation and expansion of criminal networks.

The analysis of the data collected in this study highlighted the key thematic areas that define the dynamics of social relations within prison communities. The key themes include:

Social networks among prisoners – Prisoners form informal groups based on shared origins, previous friendships, or similar experiences.

Hierarchical relationships and power dynamics – Informal hierarchies develop within prison communities, with prisoners who have more resources or influence taking on leadership roles.

Connection through common factors – Social networks are often formed based on geographic origins or other similarities, allowing prisoners to create a sense of belonging and support.

Social networks

One of the key elements of prison life, as revealed by this study, is social networks, which are most often based on geographical origins, previous friendships, or shared experiences. N.V. points out: "*People stick together by cities or acquaintances. If you know someone, it's easier to adapt*." These groups not only offer protection and assistance but often serve as a foundation for recruitment into criminal activities. D.J. emphasizes: "*It's hard to survive without support; they provide you with protection. If you don't have anyone, you easily become a target*." D.M., who spent nine years in prison, points out that prisoners without external support face pressure to join groups: "*If you're not in a group, you easily become a target*." S.O. adds that female prisoners without support have to do small chores in exchange for cigarettes or coffee, while those with more resources have more influence. S.D. highlights the importance of respect in prison social networks: "*If you're not problematic, you find your place. Belonging to a group gives you protection*." N.G. emphasizes that prisoners without external support often enter into informal agreements, doing chores in exchange for basic necessities.

These testimonies indicate that informal networks shape prison life, providing a sense of belonging, but also facilitating the spread of criminal activities.

Hierarchical Relationships and Power Dynamics

The hierarchy in prisons operates on two levels – formal and informal. The formal hierarchy, represented by the guards and staff, is responsible for maintaining order, but their power is often limited (Wooldredge, 2020). Prison staff mainly perform technical tasks, such as roll calls. N.V. says, "*In eight years, I saw a counsellor only four times*." N.G. confirms that the guards were fair, but the everyday life of prisoners largely took place through informal networks. The informal hierarchy, based on reputation

and resources, has more influence. Prisoners with access to resources, such as food or cigarettes, become leaders. S.O. points out that prisoners with packages from the "outside world" gain power, while others seek protection from them. S.D. emphasises that authority in prison is built through respect: "*Authority in prison is earned over time and through effort, you can't just come and say – I'm the boss, because then you slip*." He adds that conflicts often arise over trivial matters and that control over resources brings real power.

Connection Through Various Factors

The results of this research show that prison conditions make resistance to recruitment more difficult because prisoners rarely seek help from the staff. Trust in institutions is minimal. D.J., who spent three years in prison, says: "*There is no one to turn to. If you complain to the guards, it could get worse. It's better for you to join a group*." This lack of trust allows informal hierarchies and criminal activities to strengthen, as prisoners rely on their own networks. N.V. notes: "*Only 10% of the staff control the situation, the rest avoid conflicts*." Due to the lack of staff engagement, informal groups take control, and prisoners become dependent on these structures for protection. S.O. adds that formal systems often do not work, so female prisoners must rely on other female prisoners for resources and protection. D.M. confirms that formal hierarchies are barely present, and most problems are resolved among the prisoners. The results of this research show that the lack of institutional support contributes to the strengthening of informal hierarchies, making prisoners dependent on criminal groups for resources and safety.

When we talk about isolation and lack of support, it should be noted that uneven and unequal prison conditions, together with isolation from the outside world and the lack of support, make prisoners more susceptible to criminal recruitment, as the results of this research show. Furthermore, the research results show that prisoners without social support, such as those who do not receive packages or visits, become ideal targets because they have nothing else to rely on. D.J. says: "*If you don't have help from the outside, you have to manage. In prison, this usually means joining a group*." N.G. describes how those without money are forced to work for cigarettes or coffee, doing chores like washing clothes. Although they are not directly involved in crime, such prisoners become part of the informal economy, where they depend on the resources of other prisoners. S.O. emphasises that women without external support often sought help from other female prisoners, doing small chores to survive. Although these

activities are not directly criminal, dependence on resources facilitates future manipulation. S.D. points out that young prisoners, lacking experience and support, often seek protection by joining criminal groups. These testimonies, presented in our research, indicate that isolation and the lack of external support make prisoners vulnerable to recruitment, forcing them to rely on internal networks that exploit their vulnerability for their own interests.

Recruitment into Criminal Groups

The results of this research indicate that recruitment in prison takes place subtly, without direct coercion or violence. Younger prisoners, often without external support, approach more experienced criminals for protection or resources. N.G. says: "*They offer themselves, no one forces them directly*," indicating that recruitment is mostly based on voluntary interest. D.J. emphasises the system of indebtedness as a key mechanism: "*Older prisoners put you in debt, and you have to repay through work*." This system creates dependence and pressure on the younger prisoners, but it rarely extends beyond the prison walls. D.M. confirms that promises of cooperation outside of prison often remain unfulfilled: "*They promise, but you never see them outside*." S.O. adds that women without external support often do small chores "*for cigarettes or coffee*," which, although not directly criminal, creates a dynamic of dependence. S.D. highlights how younger prisoners offer themselves to prove themselves and secure their place in the group.

Discussion

The results of this research reveal the complex mechanisms of criminal recruitment within prison institutions, with key factors facilitating recruitment including social networks and hierarchical relationships among prisoners. Based on the experiences of the respondents, prisoners who are socially isolated or lack adequate institutional support often seek protection in informal groups, which provide them with a sense of belonging and security, while hierarchical relations within these groups further strengthen the structure and stability of criminal networks (Pavićević, Ilijić & Batrićević, 2024). Such social connectivity allows prisoners to meet their basic needs and create a sense of community, while the presence of loyalty, resources, and protection from criminal groups becomes a means of survival. These hierarchical relationships can lead to conflicts over status and influence, with prisoners who have better access

to resources assuming leadership positions, while vulnerable prisoners are pressured to join in order to avoid violence (Matijašević & Pavlović, 2009; Savona et al., 2017).

The theoretical framework of deprivation and importation theories helps in the broader interpretation of these results. The deprivation theory explains how isolation and the loss of social support encourage prisoners to join criminal groups, seeking social protection and a structure that compensates for lost freedoms (Wooldredge, 2020). In contrast, the importation theory suggests that prisoners bring values and norms from criminal groups in the outside world, facilitating the formation and maintenance of criminal hierarchies within the prison. Both theoretical frameworks provide insight into the reasons why prisoners, particularly those without external support, quickly adopt the norms of the prison subculture and power relations, which further facilitate the preservation and expansion of criminal networks.

The findings of this research highlight the need for reforms that would provide greater institutional support for prisoners, particularly for vulnerable groups, in order to reduce their dependence on informal criminal networks and ease the rehabilitation process. The hierarchy within criminal groups plays a crucial role in organizing daily life and access to resources. According to Matijašević and Pavlović (2009), this hierarchy is based on discipline, strategic planning, and the interests of members, enabling criminal groups to operate efficiently within the prison. The recruitment of new members is often a subtle process in which prisoners voluntarily assume roles, although these relationships rarely last beyond the prison walls. Criminal groups survive through corruption and connections with state institutions, enabling them to freely operate and coordinate within the network, with key roles played by central actors responsible for linking different parts of the network (Bright et al., 2022).

In-depth interviews enabled the identification of key patterns in the prisoners' adaptation to the prison environment. Respondents highlighted that deprivation and a lack of trust in staff shape violence and recruitment into criminal groups. Similar observations are made by Wooldredge (2020), who notes that prisoners develop subcultures as a coping mechanism to deal with the pressures of prison life and protect their interests.

Results of our Research

These results are consistent with the previous research on prison culture and recruitment into criminal groups. For example, Matijašević and Pavlović (2009) state that the prison hierarchy within criminal groups operates based on strict discipline and the common interests of members, which enables the effective implementation of criminal activities, including the recruitment of new members. These prisoners often become targets of criminal groups, who offer them protection and resources in exchange for loyalty, thereby expanding criminal networks both inside and outside of prison. Meško and Hacin (2018) also confirm the existence of a specific prison subculture dominated by anti-authoritarian attitudes, secrecy and hierarchical structure. Such elements not only undermine the rehabilitation of prisoners but also further encourage their recruitment into criminal networks, particularly among prisoners without external support. Similar findings are presented by Fredman (2013), who describes the impact of prison subculture, particularly prison gangs, on new prisoners. The organisation of criminal groups within prisons involves not only protection, but also the opportunity for integration through criminal activities, thereby expanding the network and recruiting new members. Savona et al. (2017), in their systematic analysis, highlight key social and psychological factors in the recruitment process into organised criminal groups, such as economic insecurity and identification with the group, which is a common phenomenon among prisoners who face restrictions within the prison environment.

Research Limitations

The primary limitation of this research is the small sample of respondents, which may limit the generalisability of the results. Although interviews were conducted with prisoners from various institutions, the sample was restricted to those who were available and willing to share their experiences. This could create selection bias, as the participants may not be representative of all strata of the prison population. Additionally, the use of self-reporting could have introduced bias in responses to sensitive topics such as violence and criminal activities. Another limitation relates to the lack of data on the role of prison staff in controlling recruitment, which requires further investigation to gain a more complete understanding of their role. It should be added here that although the selection of participants was not based on predefined inclusion criteria, their responses provided insights into certain dynamics within prison groups, which

enriched the preliminary understanding of these processes and their potential impact on individuals.
Finally, the last limitation relates to the period of the respondent's prison sentence, i.e., the fact that all participants have been free for at least six years. This fact leaves open the possibility that in the meantime changes have occurred within the prison system, including changes in the structure of subcultures, the functioning of criminal groups, or the approach of prison staff to informal hierarchies. Therefore, the findings of this research should be interpreted in light of potential changes in the prison environment that may have affected the dynamics of social relations and recruitment processes within prisons.

Research Contribution

The contribution of this research lies primarily in the deeper understanding of the role of social networks and power relations among prisoners. The research shows how social networks not only serve as survival mechanisms in the prison environment but also significantly facilitate the recruitment process into criminal groups. Based on the experiences of the respondents, the research reveals that those prisoners who lack external support are particularly vulnerable, as they often find protection and a sense of belonging within informal criminal structures.
As an important theoretical contribution, the study integrates deprivation and importation theories, which explain why prisoners quickly adopt criminal norms and hierarchical relationships. The deprivation theory highlights how isolation and lack of support encourage prisoners to seek safety within criminal networks, while the importation theory demonstrates that prisoners bring values from criminal groups in the outside world into the prison context, contributing to the spread of criminal activities within prisons.
In addition to theoretical insights, the research has practical implications that may be important for the development of prison policies. The findings emphasise the need for stronger institutional support, particularly for vulnerable prisoners, in order to reduce their dependency on criminal networks and increase the chances for successful rehabilitation. This study can serve as a basis for recommendations for reforms in prison institutions, thus contributing to the improvement of policies aimed at reducing the influence of criminal groups within the prison environment.

Practical implications

The results of the research indicate the need for a reform of prison policies, particularly with regard to curbing the influence of criminal and harmful informal groups within prisons. Reducing their influence could be achieved through improving prison conditions and engaging mental health professionals, as well as experts in social and pedagogical work. Additionally, it is important to develop psychological support programmes for prisoners, especially those entering prison for the first time, in order to reduce the pressure to join criminal groups.

Furthermore, the research showed that the perception of fairness among prisoners plays a key role in their behaviour towards staff. Prisoners who believe that sanctions or privileges have been unfairly taken away are more likely to resist, which leads to a deterioration in relations with staff (Liebling, 2008). Prison management and staff have a significant influence on shaping prison culture and the level of violence, which indicates the need for a more proactive approach to managing prison dynamics (Wooldredge, 2020).

Conclusion

The research has pointed out key factors that may contribute to the process of criminal recruitment within prison institutions. The hierarchical structure of prisoners, social networks, and the role of prison staff play a central role in shaping prisoners' daily lives and their involvement in criminal groups. The result of this research indicates that prisons are specific social environments where informal hierarchies and social networks not only enable survival but also facilitate criminal recruitment. In this context, prisoners without external support and adequate institutional resources become the most vulnerable targets for criminal groups, thus maintaining criminal behaviour even after leaving prison.

Further research should focus on longitudinal studies to monitor the long-term impact of prison life on the criminal careers of prisoners. These results could help in developing strategies to reduce criminal recruitment within prisons and increase the chances of successful reintegration of prisoners into society. Such research could lead to the development of more effective prison policies, contributing to the reduction of the influence of criminal groups within prison institutions.

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Review Paper

Legitimacy and Order in Prisons: Slovenian Experience

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The presence of order in prisons is a necessary precondition of all forms of treatment of prisoners, regardless of the aims of punishment. In modern prison systems, the maintenance of order is no longer based on traditional control strategies, where the prison staff achieve compliance from prisoners by "carrot and stick" strategies, including the [threat of] use of force, but on legitimacy. Achieving order based on legitimacy is a tremendous task that requires relinquishing a significant part of authority and control power from prison workers, and their internalisation of "soft power" approaches to control prisoners. The paper focuses on achieving order in prisons based on prisoners' perception of prison staff's legitimacy. First, a theoretical framework of legitimacy and its antecedents, as well as different natures of legitimacy, are presented. Following the theoretical discussion on order and legitimacy, a review of Slovenian research on legitimacy in the prison context is provided. In conclusion, the Slovenian contribution to the existing knowledge on legitimacy and order in prisons, as well as limitations and future research prospects, are discussed.

Keywords: *Legitimacy, Order, Relations, Justice, Slovenia*

Introduction

Traditional strategies for managing prisons have been based on the element of coercion, through which prisoners are subjugated to the established rules and order is maintained. Achieving and maintaining order is the primary

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objective of every prison system/administration or rather individual prisons, regardless of the aims of punishment (Logan, 1992). Liebling (2004) defined order as the level of structure, stability, predictability and acceptability of the prison environment. Put differently, order in prison is defined by the prison rules that reflect the internal situation of prisons, primarily the treatment of prisoners and level of security, and wider moral norms of society (Brunton-Smith & McCarthy, 2016).

Almost three decades ago Sparks and Bottoms (1995) drew attention to the alternative path for achieving order in the prison environment that departs from the elements of coercion and focuses on the concepts of legitimacy. The fundamental element of the legitimacy-based approach is that achieving prisoners' compliance with prison rulers and prison staff's instructions/orders is not [solely] based on coercion (i.e., fear of sanctions in cases of misconduct) but on their voluntary compliance (i.e. internalised sense of obligation to obey), which is achieved through prison staff's fair treatment and establishing genuine relations (Reisig & Meško, 2009). The presence of legitimacy influences internal order that is "stronger and more resistant" to the effects of everyday "situations" in prisons (Hacin & Meško, 2020; Liebling in Price, 2001; Sparks et al., 1996).

The empirical research of legitimacy in criminal justice has predominately focused on police legitimacy, based on Tyler's (1990) work *Why People Obey the Law,* in which he exposed the importance of procedural justice in police-citizens interactions for achieving police legitimacy. Based on this pioneering work, it can be argued that the legitimacy of power-holders derives from an individual's voluntary compliance, which is conditioned by the legality and moral values of the authority. Individuals who consider actions against them by power-holders (e.g., police officers, prison officers, etc.) as just, possess positive emotions towards authority regardless of the outcome. Tyler's (1990) model presumes authority's neutrality of processes and procedures as well as respect for the rights, feelings and dignity of individuals. Similarly, most penological studies on legitimacy in prisons (e.g., Brunton-Smith & McCarthy, 2016; Crewe, 2011; Hacin & Meško, 2020) were based on procedural justice models used to measure police legitimacy (Bottoms & Tankebe, 2012; Sunshine & Tyler, 2003; Tyler, 2003; Tankebe, 2013). Approximately a decade ago, deriving from the philosophical works of Max Weber (1978), Bottoms and Tankebe (2012, 2013) presented a new dimension of legitimacy – self-legitimacy. They argued that legitimacy is dialogical in nature, consisting of the perception of the legitimacy of authority (i.e., power-holders) by the governed and power-holders' perception of self-legitimacy (i.e., power-holders' belief that the authority they possess is morally valid). In the prison context,

building a prison staff's legitimacy in relation to prisoners is possible when prison workers come to believe in the legitimacy of their own power (Hacin & Meško, 2020). As the number of legitimacy studies in non-western prisons (e.g., Akoensi, 2016; Akoensi & Tankebe, 2020; Reisig & Meško, 2009; Hacin & Meško, 2020) grew, the dependence on the dialogical nature of legitimacy in the place and time, in which they occur, became obvious (Bottoms & Tankebe, 2021). As legitimacy research in recent years has presented new: 1) dimensions of legitimacy, 2) theoretical models, and 3) variables, attempts were made to synthesise all of the accumulated knowledge into a single theoretical framework (Hamm et al., 2022). However, as Trinkner and Reisig (2022, p. 164) wrote: "The field will only benefit if this creativity is leveraged to an even greater extent moving forward. In this respect, calls for an integrated theory and common understanding will only serve to stifle development."

The paper focuses on the presence of legitimacy in the prison context as an alternative [and more humane] path to achieving and sustaining order. In the first part, different dimensions of legitimacy in the prison context are presented, followed by a review of Slovenian research on legitimacy in prisons. In conclusion, the Slovenian contribution to the existing knowledge on legitimacy and order in the prison environment is highlighted and future prospects for research are delineated.

Legitimacy and Self-legitimacy in the Prison Environment

Prison is a special social institution that the wider society recognizes as legitimate and morally justified. Costa (2016) highlighted the dialogic nature of legitimacy, where the external (in relation to the wider society) and internal (in relation to prisoners) justification of existing penal policies and practices must be ensured. The first form refers to the wider social legitimacy that is necessary for the existence of prisons as a morally justified form of punishment in modern society, while the second form, that is internal legitimacy, is established within prisons between prisoners and the prison staff (Bottoms & Tankebe, 2012; Sparks & Bottoms, 1995). The latter is the subject of the following theoretical discussion.

Perception of Legitimacy in the Prison Context

Relations between prison workers and prisoners have advanced greatly since the 1980s, when McDermott and King (1988) described them as a culture of mutual contempt and hostility (see for example Crewe, 2011; Weinrath, 2017). In recent decades, a reconstruction of penal power in the prison environment (i.e., most modern prison systems) has taken place, moving away from traditional coercive power towards the use of a "soft-power" approach based on quality relationships between prison staff and prisoners. This innovative approach represents a broader form of neo-paternalism, in which the use of coercion is unnecessary (Crewe, 2009, 2011; Nye, 2004). Jackson et al. (2010) highlighted the importance of alternative paths of establishing and maintaining order in prisons, since the prison environment is dangerous and maintaining order through coercion and/or the use of force does not encourage the voluntary cooperation of prisoners and their willingness to respect prison rules. The presence of legitimacy in the prison environment presents an alternative to traditional control strategies based on coercion, where prison workers build relationships with prisoners based on justice, equal treatment and respectful behaviour.

Reiter (2014) argued that building and maintaining legitimacy in prison as a special social group is a challenging process, as it represents a structurally and bureaucratically closed environment. The concept of legitimacy in such a context can be defined as the willingness of prisoners to voluntarily submit to the power-holders (i.e., authority of the prison staff through which prisoners are subjugated to prison rules) due to their characteristics and behaviour, which influence prisoners' awareness of the obligation to obey and follow the rules and instructions (Franke et al., 2010; Tyler, 2003). In other words, the duty of prisoners to submit to prison workers is the result of abandoning their own moral beliefs and acting for their own benefit, as they perceive authority as a subject to whom they are obliged to behave in an exemplary manner and the way that is required of them. Sparks et al. (1996) wrote that a certain level of internal legitimacy can be achieved in prisons if it is based on fair and respectful relations between prison workers and prisoners.

The experience of imprisonment can be positive, or at least neutral if prisoners perceive the authority's procedures as fair (Franke et al., 2010). Tyler (2010) highlighted that prisoners will perceive prison workers as fair regardless of the outcome of decisions (obtaining benefits or sanctions) if: (1) they are given/allowed a "voice" (i.e., the opportunity to express their opinion) and (2) the decisions of prison workers are neutral and their

behaviour towards prisoners is respectful and dignified, showing concern for the well-being of prisoners. Such perceptions of treatment reflecting procedural justice affect prison workers' perception of prison staff's legitimacy and, consequently, adapting their behaviour according to the rules and laws (Tyler, 2010). Respectful and honest relations between prison workers and prisoners result in lower stress levels and better well-being for everyone (Barkworth, 2021; Liebling & Arnold, 2004; Molleman & van Ginneken, 2015). Prisoners who perceive prison workers as compassionate, supportive and open to resocialization perceive their own situation in prison more positively and are less likely to violate prison rules or be involved in violent confrontations with prison workers or other prisoners (Beijersbergen et al., 2015; Molleman & Leeuw, 2012).

The Concept of Self-legitimacy

Every power-holder seeks confirmation of his own legitimacy from the individuals over whom he exercises authority. Confirmation is sought in dialogues about legitimacy that are influenced by the specifics of the place and time in which they occur (Bottoms & Tankebe, 2021). Legitimacy in prison is not a fixed phenomenon but rather depends on an eternal discussion (i.e., continuous dialogues) between power holders and recipients (Bottoms & Tankebe, 2012). In other words, the nature of legitimacy in prisons is dialogical and based on interactions between prisoners and prison workers. In interactions with prisoners, prison workers confirm their status as legitimate holders of authority. However, the legitimacy of authority is also "fluid" or unstable, as it varies, due to the behaviour of prison workers toward prisoners or the influence of wider factors in prison (Bottoms & Tankebe, 2012, 2013; McNeill & Robinson, 2013). Acceptance of power holders requires appropriate relations with the recipients as well as fair treatment and behaviour of power holders, or, as Woolf (1991) pointed out, prisons must seek legitimacy from prisoners.

Self-legitimacy of prison staff is the foundation of a successful dialogue between prison workers and prisoners. Self-legitimacy can be defined as the confidence of power holders in the legitimacy of their own authority or position (Bottoms & Tankebe, 2013; Tankebe, 2019). Tankebe (2014) argued that self-legitimacy is a process of building, confirming, or resisting a certain self-image of a power holder. Individuals enter the legitimacy dialogue with the audience with an image of themselves as self-confident and just holders of authority/power. This type of dialogue in prison is primarily based on the quality of the relationships between the prison staff and prisoners, as well as the quality of the relationships with colleagues and

superiors, which are formed through daily interactions. Within this form of legitimacy, power holders seek confirmation through "internal conversation" that the authority they hold is morally justified (Akoensi & Tankebe, 2020; Archer, 2003). Building and maintaining the legitimacy of authority in prisoners' eyes is only possible if prison workers believe in the eligibility and moral justification of their position as power-holders. Prison workers seek confirmation of their own position or the power they possess from prisoners who represent the "audience" (Barker, 2001). The nature of legitimacy in an unpredictable, closed and stressful prison environment is unstable, as it is based on relationships between prison actors, which (at least between prisoners and prison workers) are unpredictable and quickly "break down".

Prison workers must achieve the status of trustworthy individuals with prisoners if they want to achieve their compliance on a normative level. In order to achieve such compliance, prison workers actively enter into relationships with prisoners, in which they look for an opportunity to present their attitudes and trustworthy behaviour. Positive outcomes of these interactions confirm to prison workers their "right to rule" as holders of authority (i.e., prisoners through their behaviour express compliance with prison workers' authority). A positive perception of one's own legitimacy affects the efficiency and professionalism of prison workers and has a positive impact on the implementation of prison tasks, relations between prison staff and prisoners, treatment of prisoners and maintenance of order (Hacin & Meško, 2020).

The interactions of power-holders with their colleagues, superiors and audiences represent moments for learning about legitimacy, as they represent an opportunity to validate already formed possible selves (Tyler & Blader, 2000). Bottoms and Tankebe (2013) argued that power-holders interact with audiences to project and seek validation of a particular self-identity that believes to be the rightful holder of authority. Tankebe (2019) called the search for confirmation of their own legitimacy the triad of recognition since prison workers primarily seek confirmation of the legitimacy of their position from superiors, colleagues and prisoners (i.e., core variables/antecedents of self-legitimacy).

Slovenian Research on Legitimacy and Order in Prisons

The study of legitimacy in criminal justice began in 2007 when Meško and Klemenčič (2007) published a chapter focusing on rebuilding legitimacy and police professionalism in the former socialist environment of Slovenia, in which they discuss the challenges of Slovenian police to implement legitimate [democratic] policing. Empirical studies on police legitimacy and self-legitimacy of police officers soon followed, and developed significantly over the years, resulting in first comparative studies (Hacin & Meško, 2022; Meško & Hacin, 2023a, 2023d, 2024; Reisig et al., 2014, 2021). While research on police legitimacy has put Slovenia on the world map, the research on the different dimensions of legitimacy in prisons has placed it in the company of leading countries in the field (e.g., United Kingdom, USA, and the Netherlands). The empirical penological research in Slovenia has been well-developed (see Hacin, 2015), however, the studies focusing on legitimacy in the prison context began 15 years ago.

Prisoners' Perception of Legitimacy

In 2009, Reisig and Meško conducted the first empirical study focusing on legitimacy in the largest Slovenian prison Dob, deviating from the established pattern where empirical studies on legitimacy predominately focused on police legitimacy. Their findings, based on interviewing 103 prisoners, provided empirical evidence on the dependence of legitimacy on cultural and legal contexts, as Tyler's social-psychological framework was identified as not best suited for the Slovenian prison environment. In addition, an important link between fair and respectful treatment of prisoners and their engaging in misconduct and violating fewer institutional rules was identified, exposing the role of procedural justice and the legitimacy of prison staff in maintaining order in the prison setting (Reisig & Meško, 2009).

Building on Reisig and Meško's (2009) findings, future research on legitimacy in the prison context focused on using mixed methods and enlarging the sample size that would not only significantly increase the reliability of results but also enable generalisation, testing new antecedents of legitimacy, and the influence of legitimacy on prisoners' willingness to cooperate with prison workers. In 2015 and 2016 Hacin and Meško carried out the first comprehensive study on legitimacy in the Slovenian prison system. Based on a survey of 328 prisoners from all prisons and a correctional home, Hacin (2018b) identified procedural justice, distributive justice, trust in authority, the effectiveness of prison workers, relations with

prisoners, relations with prison staff, obligation to obey as antecedents of prisoners' perception of legitimacy. The findings deviated from Tyler's social-psychological model and Bottoms and Tankebe's (2012) model comprising lawfulness, distributive fairness, procedural fairness, and effectiveness, as relations between prison workers and prisoners were exposed as an important correlate of prisoners' perception of prison staff legitimacy. In addition to certain sociodemographic variables, prison regime was identified as an important correlate of legitimacy, as prisoners in open and semi-open departments perceive the legitimacy of prison staff more positively than those in closed departments. Confirming the importance of setting on perception of legitimacy in the prison context. In addition, Meško and Hacin (2019b) highlighted that prisoners who were in prison for the first time in contrast to recidivists perceived the legitimacy of prison staff more positively.

Hacin and Meško's (2018) qualitative study, based on 193 interviewed prisoners in the entire Slovenian prison system, confirmed the findings of quantitative studies on the important role of distributive justice, procedural justice, quality of prison staff–prisoner relations, and the effectiveness of prison workers on prisoners' perception of prison staff legitimacy. The study demonstrated that normative compliance deriving from the internalised feeling of obligation to obey is not present with most prisoners, who follow prison rules and comply with prison staff's instructions due to fear of sanctions, which can be described as instrumental compliance.

Meško and Hacin (2019a) conducted a comparative study, in which they focused on legitimacy, procedural justice and violent subculture as predictors of social distance between prisoners and prison workers. Using samples from Reisig and Meško's (2009) and Hacin's (2018b) studies, they provided empirical evidence that social distance and its correlates vary over time and across different prison settings. The study presents the first comparative study of prisoners' perception of prison staff legitimacy in Slovenia, and the first attempt to expand the research on legitimacy into a longitudinal study, following the example of measuring social climate in Slovenian prisons, research periodically implemented since 1980 (Brinc, 2011).

Self-legitimacy of the Prison Staff

Meško et al. (2014) conducted the first empirical study on self-legitimacy in the Slovenian prison context, in which they compared antecedents of police and prison officers' self-legitimacy. Findings, based on the samples of 529 police officers and 101 prison officers confirmed: (1) the suitability of Bottoms and Tankebe's (2012, 2013) model for measuring self-

legitimacy in a former socialist cultural environment of Slovenia, (2) that the proposed model, originally drawn for measuring police officers' self-legitimacy can also be applied to measure self-legitimacy in the prison context, and (3) the existence of relatively small differences in perception of self-legitimacy between the groups. In addition to supervisors' procedural justice, relations with colleagues and audience legitimacy (i.e., the triad of recognition), Meško et al. (2017) also identified distributive justice as a correlate of prison officers' self-legitimacy, as well as their organisational commitment. Prison officers who positively perceived their legitimacy were more inclined towards fair treatment of prisoners (Meško et al., 2016, 2017).

Deriving from the findings of early empirical studies on self-legitimacy, in 2015 and 2016, Hacin and Meško conducted the first comprehensive study on prison workers' self-legitimacy in Slovenia using a mixed methods approach. The statistical analysis of the quantitative data gathered by surveying 243 prison workers from the entire Slovenian prison system, revealed the importance of relations between prison workers and prisoners, as well as relations with colleagues, supervisors' procedural justice, audience legitimacy, satisfaction with salary, and certain sociodemographic variables on prison workers' perception of self-legitimacy (Hacin, 2018a). Comparison between prison officers' and treatment workers' perception of self-legitimacy and its antecedents revealed that only the internalisation of prison workers subculture varies in different groups of prison workers, exposing the stability of self-legitimacy in the Slovenian prison context (Hacin & Meško, 2017). In contrast, using the samples of Meško et al.'s (2014) and Hacin's (2018a) studies Hacin et al. (2019) highlighted the unstable nature of self-legitimacy, as it varied over time and between different groups of prison workers. Additionally, the impact of self-legitimacy on prison workers' attitudes and behaviour toward prisoners was tested. Meško and Hacin (2020) exposed the interconnectivity between self-legitimacy and the use of force, as prison officers' who perceived their own legitimacy more positively expressed greater willingness to use force upon prisoners, indicating that some prison officers believe they represent a higher level of normative validity than the state, which reflect in their retributive stance in relation to prisoners, importantly effecting the overall order in prisons. Once again, the comparative study between prison officers and police officers was carried out, using samples from 2013/2014 and 2016. While the stability of police officers' self-legitimacy was confirmed the same cannot be said for prison officers, as factors influencing their perception of self-legitimacy varied over time (Hacin & Meško, 2021). The findings of the study presented the

first indication that model(s) for measuring self-legitimacy, primarily designed to measure the self-legitimacy of police officers, may not be best suited for the prison environment.

The qualitative analysis of interviews with 139 prison workers from all Slovenian prisons and a correctional home, confirmed the findings of statistical analysis and provided much-needed insight into the complexity of self-legitimacy. Meško et al. (2019) argued that the self-legitimacy of prison workers presents the basis for a successful dialogue between them and the prisoners. Their findings revealed that: (1) the self-esteem of prison workers derives from the confidence in their own capabilities and expertise, (2) the identity crisis is present among prison workers, especially prison officers who have been structurally embroiled in role conflict (providing security and treatment of prisoners), (3) deteriorations of relations with colleagues resulted in widespread cynicism among prison workers, and (4) differences in prison workers' perception of supervisors' procedural justice are present, as lower- and middle-level supervisors are appreciated, while upper management is perceived as disinterested in the problems with which prison workers are faced in "the trenches".

The comprehensive study of self-legitimacy in the prison environment set the course for further research that focused on comparative (longitudinal) measurement of prison workers' self-legitimacy, and introducing new variables. New variables were introduced as possible antecedents of self-legitimacy, as well as outcomes. In 2022, the second measure of prison workers' self-legitimacy in the Slovenian prison system took place. By surveying 322 prison workers from all six prisons and a correctional home Hacin et al. (2022) identified relations with prisoners, prison staff subculture, prison workers' competencies, and satisfaction with payment, as the strongest correlates of prison workers' self-legitimacy. In addition, this study revealed that legitimacy is inherently unstable over time, as contrary to previous studies, traditional variables (i.e., supervisors' procedural justice, relations with colleagues, and audience legitimacy had no impact on self-legitimacy). An in-depth analysis of this phenomenon was performed in the form of comparative studies using samples from 2016 and 2022, and results still need to be published. In this latest measure of prison workers' self-legitimacy, Hacin and Meško (2024) also focused on the outcomes of self-legitimacy, especially its impact on prison workers' attitudes and behaviour. Findings showed that self-legitimacy has no influence on prison workers' support for resocialisation and harsh treatment of prisoners, as the prior was influenced by the low presence of prison staff's subculture, feelings of obligation toward prisoners, and gender, while poor relations with

correctional clients, lack of cooperation between prison services and achieved level of education influenced the latter (Hacin & Meško, 2024).

Conclusion

Studies focusing on legitimacy in criminal justice underwent a revolution in the recent decade(s), empirically testing predominately Western theories in the Western countries and "abroad", and introducing new dimensions of legitimacy. Slovenian contribution to the field was not insignificant. Over the years different theoretical models were tested in Slovenian and other non-Western environments, only to reveal that they need to be modified for use in non-Western cultural environments, as well as in different organisations within criminal justice. Similar findings were revealed by prison studies on self-legitimacy in Ghana (see Akoensi, 2016; Akoensi & Tankebe, 2020) and legitimacy studies focusing on police organisations in Asian countries (e.g., Sun et al., 2017, 2018). While the role of procedural justice was significant, other variables, mainly authority's effectiveness and power holders-recipients relations were identified as important predictors of legitimacy in non-Western countries. It is possible that proposed theoretical models for studying legitimacy and self-legitimacy developed in Western countries and deriving predominately from Anglo-Saxon legal and political legacy are not fully applicable in countries (i.e., criminal justice systems) with different cultural, legal, and political histories of development.

As legitimacy studies have been predominately implemented in police organisations, the suitability of models, first developed to measure the legitimacy and self-legitimacy of police officers, was tested in Slovenia. Comparison of perception of self-legitimacy with police officers and prison officers revealed significant differences (Hacin & Meško, 2021; Meško et al., 2014; Meško & Hacin, 2023c)), confirming that while both services are under the umbrella of the criminal justice system, differences deriving from the nature of work are profound influencing individuals' perception of their own legitimacy. Certain differences were also identified among different services within prisons (Hacin & Meško, 2017; Hacin et al., 2022), however, these were minor, indicating that used models to measure the self-legitimacy of prison workers are suitable. It has to be emphasised that caution should be applied in interpreting the results, as the effect of "too much" fragmentation can be counter-productive in the drive towards a comprehensive theory on different dimensions of legitimacy.

Slovenian tendencies to develop comparative and longitudinal studies produced results that revealed or, better yet, confirmed "suspicions" about

the unstable nature of legitimacy. Findings of the latest measurement of prison workers' self-legitimacy (Hacin et al., 2022) showed that not only the legitimacy is fluid in nature, but also that our own proposed and empirically tested models need further work, as new antecedents of self-legitimacy were identified, while at the same time the impact of traditional "core variables" was practically zero (Hacin & Meško, 2024). The advantage of the smallness of the prison system enables us to implement national studies, allowing us to generalise the results and, at the same time, with greater certainty, confirm, refute or better yet, contribute to the theoretical premises delineated [mostly] abroad. Nevertheless, the results of comparative studies should be interpreted with much caution, acknowledging the social context and the broader changes that affect the prison system. For example, the situation in Slovenian prisons deteriorated significantly in the period 2016–2022 due to significant increases in foreign prisoners, violent prisoners, addiction among prisoners, overcrowding, and a lack of recruits, leading to greater work overload and burnout negatively influencing self-legitimacy of prison staff. Also, specific methodological issues remain, especially concerning causality.

In general, it can be said that what began as a proposal of a modified theoretical model that would suggest the simultaneous study of legitimacy and self-legitimacy to be implemented in Slovenian prisons (Hacin & Fields, 2016) grew to be the first comprehensive study of the dual nature of legitimacy in the prison environment in the world. The study's findings deepened our understanding of legitimacy and self-legitimacy in the prison context and provided much-needed empirical support for theoretical claims on the interconnectedness of both natures of legitimacy based on prison staff-prisoners relations (Hacin & Meško, 2020). While the proposed dual model of legitimacy and self-legitimacy that derives from prison staff-prisoners relations was operationalised and tested (in 2016 on prisoners and prison staff, and in 2022 on prison staff) these are still early days. Specifically, the proposed model lacks testing in other non-western environments, which would increase its validity and is still in the process of development, as new factors/variables are being formulated for further testing. It has to be noted that in comparison with prison studies focusing on legitimacy and self-legitimacy in other countries, Slovenia has several advantages that could be seen in representative national samples, the robustness of applied methodology, application of mixed methods, as well as several comparative studies, which increase the validity and reliability of the results. In contrast, the size and characteristics of the Slovenian prison system present a disadvantage in the broader perspective, as findings are simply not that interesting for "big players", such as the USA

or Great Britain. Nevertheless, the foundation of legitimacy research in Slovenia is strong, and the course of research towards comparative/longitudinal was set, which can be of great significance not only for Slovenian criminal justice studies and practice but also for legitimacy theory in general (e.g., Hacin et al., 2022; Meško & Hacin, 2023b).

Despite being a relatively small country, Slovenia has achieved much in the last 15 years in the field of legitimacy research. While the research on police legitimacy has been complex and broad, research on legitimacy and self-legitimacy in the prison context offered the first comprehensive and comparative studies on national samples. The latter are valuable, however, to fully understand the dynamics of legitimacy and self-legitimacy, additional studies must be implemented to enable the "jump" from comparative to longitudinal research. The latter is one of the principal goals for future research on legitimacy in Slovenia. In addition, the proposed [modified] model(s) of the dual nature of legitimacy in the prison context still needs to be tested in other cultural environments, remaining a challenge for the future.

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Review Paper

Life Imprisonment and the Special Prison Regime (art. 41 bis Penitentiary Order) in Italy

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The essay deals with two issues debated in criminal doctrine and jurisprudence in Italy: life imprisonment without review and the special prison regime, institutions united by the fact that in most cases they are applied to people convicted of organised crime offences, in particular mafia crimes. The work studies their historical genesis, their regulation, their apparent purposes and those that in practice these institutions have taken on, also scrutinising the jurisprudence of the Italian Constitutional Court and the European Court of Human Rights. The conclusions highlight the fact that the real objective of life imprisonment and 'hard prison' in Italy is probably not so much and only that of preventing the offender from resuming or continuing relations with criminal organisations, but that of attempting to force the prisoner to cooperate with justice, which however poses problems of compatibility with many principles of the Italian Constitution and the ECHR.

Keywords: *Life imprisonment, Hard prison, Social dangerousness, Re-education*

Life imprisonment in Italy: problems of constitutionality

In Italy, the death penalty no longer exists, but there is a penalty «up to death» (Musumeci, Pugiotto, 2016, p. 64), i.e. life imprisonment and all related disciplines, such as the 'hostile' form of the same, and the regime of the so-called 'hard prison', *ex* art. 41 *bis* ord. penit. (Della Bella, 2012: *passim*). The subject of life imprisonment is, of course, much discussed and provokes conflicting social reactions. Life imprisonment, today, is the

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maximum punishment contemplated in the Italian legal system: Article 17 of the penal code places it among the punishments provided for crimes, together with imprisonment and a fine.
What distinguishes life imprisonment is its perpetuity: Article 22 of the Criminal Code states that «the sentence of life imprisonment is perpetual and is served in one of the establishments intended for that purpose, with the obligation of work and night solitary confinement" (Riondato, 2017: *passim*). When the Italian Penal Code came into force in 1930, life imprisonment was really perpetual, but gradually this characteristic changed and in 1962 the legislator established that a person sentenced to life imprisonment could be eligible for conditional release after serving twenty-eight years, reduced to twenty-six by the so-called Gozzini law[1] . Today, therefore, in Italy life imprisonment, at least 'on paper', has the face, rather than that of a perpetual penalty, of a penalty 'with progressive execution', in that the convicted person can change his prison status and move towards social reintegration.
On the legitimacy of life imprisonment, the Italian Constitutional Court, over the years, has always shown caution. An *excursus* of the main constitutional jurisprudence shows that the Giudice delle leggi first deemed life imprisonment not illegitimate, precisely because the offender can be set free (Constitutional Court, 22 November 1974, no. 264), and then also admitted life prisoners to the enjoyment of benefits, in particular the possibility of conditional release (Constitutional Court 21 September 1983, no. 274; Grevi, 1984, p. 19).
This legislation, however, changed in the early 1990s, when in a moment of emergency linked to the considerable increase in attacks and massacres at the hands of mafia-type organised crime, which increasingly affected representatives of the institutions, the legislator introduced an emergency legislation, which profoundly modified the prison system outlined in the Gozzini Law of 1986. The most important change concerned the prison treatment of those convicted of organised crime: Article 4 *bis*[2] was inserted

[1] Law No 663 of 10 October 1986 provides that a person sentenced to life imprisonment, once he has served the minimum number of years of his sentence and has maintained a conduct that suggests a critical review of what he has done, may obtain the application of a security measure for five years, at the end of which the sentence expires. Once twenty years of imprisonment have been served, moreover, a person sentenced to life imprisonment may be admitted to the alternative measure of semi-freedom and, after ten years of imprisonment, be granted a period of leave not exceeding forty-five days per year.
[2] The new provision of Article 4 *bis* of the prison regulations was introduced by Legislative Decree No 152 of 13 May 1991, later converted into Law No 203 of

into the prison regulations. The purpose of this change was clearly to tighten prison treatment for offenders of mafia-type organised crime (Guazzaloca, Pavarini, 1995, p. 303). An 'emergency' discipline (Moccia, 1997: *passim*), therefore, which introduced and shaped different life sentence regimes, through the combination of the new articles 4 *bis* and *58-ter* of Law no. 354/1975. Regimes that – not being able to go into detail here – diverge in the possibility of accessing or not accessing prison benefits, including that of regaining liberty[3] . In the case of a life sentence for crimes of organised crime, terrorism or subversion, access to the benefits is possible only if there is the acquisition of elements that exclude the actuality of the links between the prisoner and organised, terrorist or subversive crime, as well as collaboration with justice, *pursuant to* Article 58 *ter* of the Prison Order, in the absence of which, excluding cases of impossible or useless collaboration[4] , imprisonment remains 'until death' (Dolcini, 2019, p. 96; Dell'Andro, 2019, p. 955).

If, then, life imprisonment, in the formula allowing access to prison benefits, appears as the "presentable face" of perpetual punishment, a similar consideration cannot be made for the so-called life imprisonment. Life imprisonment, as redesigned by Article 4 *bis* of Law 354/1975 introduced in 1991, does not present any re-educative purpose conducive to social reintegration, as stated in the Italian Constitution, posing itself, on the contrary, as a perpetual penalty, which can only be reviewed in the event of cooperation with justice. Such a prison regime, well, is nothing more than a markedly afflictive sanction, with the sole objective of the offender's cooperation with justice and, therefore, if so placed, is far from any re-educative purpose, as well as from the sense of humanity of punishment (Risicato, 2015, p. 1246).

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12 July 1991. The legislator thus identified the conditions in the presence of which those convicted of offences considered to be particularly serious, traceable to organised crime, can have access to alternative measures to detention, to extramural work and to bonus permits.

[3] The benefits contemplated by Article *4a* of the Prison Ordinance are assignment to outside work, premium leave, alternative measures to detention; early release is excluded.

[4] Impossible collaboration is defined as the provision of information, but when there has already been a full ascertainment of the criminal act and responsibility, on which there was also an irrevocable judgement; collaboration, on the other hand, is useless or irrelevant when the convicted person has had limited participation in the criminal act and this does not allow for knowledge that would make collaboration worthwhile.

The issue of the alleged illegitimacy of life imprisonment, debated at both national and European level – which will be discussed below – is part of a broader problem of remodelling the prison system and reconsidering the function of punishment.

Wanting to try to illustrate way the hiatus between life imprisonment and a system oriented to the Italian Constitution in a simple, we could identify two main issues. The irreconcilability of life imprisonment with the purpose of re-education recalled by the Constitution, which normatively we can already infer implicitly from the abolition of the death penalty; the denial, for those sentenced to a sentence 'up to death', of any possibility and usefulness of re-education and resocialisation, according to the reasoning that the death penalty is a physical and material elimination, while the sentence 'up to death' is a civil and virtual elimination (Risicato, 2015, p. 1246). The life sentenced, on whose documents under the heading 'end of sentence' is indicated «year 9999», will probably never see the end of prison[5], except through his death. It is clear, therefore, that there would be little or no point in his re-socialisation and, on closer inspection, not even the offender is encouraged to adhere to the possible offers of procedures aimed at re-education and re-socialisation, as any effort would be an end in itself, practically useless.

With reference, on the other hand, to the irreconcilability of life imprisonment with the prohibition of treatment contrary to the sense of humanity under Article 27, para. 3, of the Italian Constitution, which places the person and his dignity above the state's need for prevention, it must be said that – also in light of prison overcrowding, which presents itself as dehumanising – a sentence 'until death', i.e. without end, generates an exacerbating effect, «even divorced from the abstractly and concretely imposed punishment» (Pugiotto, 2012, p. 125; Risicato, 2015, p. 1246).

It is evident, therefore, that ''ostensive'' life imprisonment, at least in its original conception, shows more strident elements with the Italian Constitution, revealing obvious disharmonies with Articles 3, 25 and 27 of the same fundamental Charter, posing itself not as a determinate penalty, not as a re-educative penalty, not as a proportionate penalty (Bianchi, 2015, p. 3822).

The European Court of Human Rights has also been asked on several occasions about the compatibility of life imprisonment with the provisions

[5] The legislation that has now been superseded by Decree-Law No. 162 of 31 October 2022, converted by Law No. 304 of 30 December 2022, has eliminated, at least formally, the absolute presumption of dangerousness of the non-cooperating life sentence.

of the European Convention itself. In the numerous judgments of the Edu Court on the subject of life imprisonment, the conventional legitimacy of this punishment has never been questioned, but rather its compatibility with the prohibition of inhuman and degrading treatment as laid down in Article 3 of the Convention.

As well as the Italian Constitutional Court, the Strasbourg Court legitimises the perpetual sentence, since, in the execution phase, thanks to access to benefits and alternative measures, as well as conditional release, it tends [in theory] not to be perpetual and guarantees the so-called 'right to hope' to the prisoner, precisely the possibility of seeing the duration of detention reduced (Colella, 2011, p. 194). The issue of the Italian 'ostensive' life imprisonment also came before the Edu Court with the Viola case, a convict who had always proclaimed himself innocent, so much so that he had never taken the path of cooperation (ECHR, *Viola v. Italy*, no. 2, 13 June 2019). The Strasbourg judge qualified Italy's 'ostensive' life sentence as a *de facto* irreducible penalty. The reasoning carried out by the European Court to reach this conclusion was developed from two points of view: on the one hand, the punishment of 'hostile' life imprisonment was based on an absolute presumption, which was completely irrational, since it was based on the idea that the convicted person is always free to choose whether to cooperate or not, when, in truth, often environmental and contextual conditions make such a choice dangerous; on the other hand, this legislative presumption, when it equated failure to cooperate with continued social dangerousness, did no more than outline the prisoner's condition as it already was at the time of the commission of the criminal act and, therefore, without taking possible changes that occurred during the execution of the sentence into account (Pugiotto, 2016, p. 17).

The 'ostensive' regime in the version prior to Decree-Law No 162 of 31 October 2022 – according to the reasoning followed by the Strasbourg Court – excessively restricted access to measures aimed at resocialisation and for this reason was at odds with the principle of the necessary finality of punishment, which, in turn, according to Article 3 of the ECHR, «would constitute a real "*positiv obligation*" incumbent on the member states of the Council of Europe» (Siracusa, 2020, p. 4).

What the European Court has provided, in the judgment under review, is a revision of the sentence of life imprisonment in order to ensure that prisoners, who are subjected to this prison regime, have a real possibility of reintegration and the opportunity to obtain their freedom again. The address given by the European Court to Italy, then, was that of a reform that would allow for a case-by-case assessment of the re-educational path of the convicted person, in the light of a critical review of the crime

committed, to the point of deeming detention no longer necessary. The implications of the Viola case soon became apparent in Italian jurisprudence (Brucale, 2020, p. 49; De Cesare, 2020, p. 83; Galiani, 2020, p. 113). Immediately after the Strasbourg Court's pronouncement, in fact, the Italian Constitutional Court, with an innovative if not unexpected ruling, found itself expressing its opinion on the so-called double sanctioning track (Corte cost., 4 December 2019, no. 253). This decision, on the subject of life imprisonment and premium permits, undoubtedly represents a step forward towards strengthening the re-educative finalism of punishment. This ruling upheld the objection of unconstitutionality of the preclusion of access to premium leave for prisoners serving a temporary sentence or life imprisonment for the offence referred to in Article 416 *bis of* the Criminal Code, in the event of their failure to cooperate with the justice system. As a result of this preclusion, the life sentence for the non-cooperating convict, according to the Court, was a flexible prison sentence only in law, thus merely in the abstract, but in fact it remained a perpetual sentence, which made the mere purpose of general prevention prevail, rather than that of the re-education of the convicted person (Constitutional Court 4 December 2019, no. 253: § 8.1 and 8.2). Among the reasons for the unconstitutionality of Art. 4 *bis* Prison Order, the Court used the irrationality of the absolute presumption, which was placed at the basis of the "hostile" regime, as it is not possible to exclude that in practice, even with voluntary cooperation, the convicted person remains socially dangerous, just as in the opposite hypothesis, even in the absence of cooperation, the conditions of social dangerousness may in reality be lacking. In the light of the Court's decision, however, it is evident that although the presumption is no longer seen as absolute, but relative, the procedure of granting the bonus permit to a person convicted of mafia-type crimes is very complex: according to the Constitutional Court, the social dangerousness of the convicted mafia offender cannot be overcome by the mere observation of his behaviour during the period of detention and his adherence to a re-education and re-socialisation path, not even by a mere declaration of dissociation, but only by the acquisition of congruous and specific elements in favour of the coming to an end of this associative bond, therefore with the reduction of the social dangerousness, which must be demonstrated by the convicted offender himself.

The Italian Constitutional Court also returned to examine the legitimacy of life imprisonment in 2021. On this last occasion (Corte cost., 11 May 2021, no. 97), however, the type of decision was different from that of the other rulings of the same Court on the subject of life imprisonment (e.g. Corte cost, 9 April 2003, no. 135), since it did not enter into the merits of the issue, opting, on the contrary, to postpone the treatment, with the aim of

allowing Parliament sufficient time to discuss and regulate the matter in a manner consistent with the Constitution (Siracusano, 2022, p. 1354; Pugiotto, 2022, p. 761; Risicato, 2021, p. 653). In the judgment in question, the Court listed several reasons that justified a different regulation of life imprisonment, first and foremost the existence of a series of acts of Parliament, capable of suggesting a concrete possibility of reforming the system, making clear reference to the bills already presented. The Consulta considered – we read in its reasoning – that its intervention in the matter would have been destabilising because it would have equated the figure of the collaborator of justice with that of the reticent, thus making a choice of criminal policy, which, instead, is a matter for the legislative power. With the position taken by the Constitutional Court in its 2021 judgment, moreover, we are faced with the recognition of the unconstitutionality of life imprisonment, without, however, this unconstitutionality having been declared.

The discipline of life imprisonment, and not only that, following the aforementioned Constitutional Court ruling of 2021, was reformed by Decree-Law No. 162 of 31 October 2022, converted by Law No. 304 of 30 December 2022 (Bernardi, 2022: *passim*). Coming to the core of the novelty on the subject of 'hostile' life imprisonment, the decree law, in addition to eliminating the relevance of 'impossible' and 'unreliable' cooperation, redesigned the prerequisites, in the absence of cooperation, for access to external prison benefits. Since the pronouncement of the Constitutional Court (Ordinance No. 97/2021) to which the Government intended to give an 'answer' shows that there cannot be an absolute presumption of social dangerousness deriving only from non-cooperation, the Decree sanctions a series of elements that the detainee must demonstrate in order to overcome a presumption that, at this point, should be considered only relative, at least 'on paper'. The reform, therefore, with regard to associative offences, goes to great lengths to identify the elements that the detainee must demonstrate in order for the presumption linked to non-cooperation to be overcome: 1) «the fulfilment of the civil obligations and obligations of pecuniary reparation resulting from the conviction or the absolute impossibility of such fulfilment»; 2) «specific elements [...] that make it possible to exclude the actuality of links with organised, terrorist or subversive crime and with the context in which the crime was committed, as well as the danger of re-establishing such links, even indirectly or through third parties». It is specified that these elements must be «different and additional to the regular prison conduct, to the participation of the detainee in the re-educational path and to the mere declaration of dissociation from the criminal organisation to which he may

belong», all this «taking the personal and environmental circumstances, the reasons that may have been deduced in support of the non-cooperation, the critical review of the criminal conduct and any other information available into account». It is added that «in order to grant the benefits, the judge shall also ascertain the existence of initiatives of the person concerned in favour of the victims, both in the forms of compensation and restorative justice».
The idea that one gets from a cursory reading of the new rule is that it was intended to set a series of conditions that are very difficult, if not impossible, to prove - although the rule speaks of [mere] «allegation» - all the more so for a detainee who has been locked up for decades in a penal institution, with all the complications that this entails also from the evidentiary point of view. Perhaps what is most perplexing is what appears to be a paradox, i.e. the burden of proving [non-]future events, i.e. alleging elements that make it possible to exclude not only the actuality of links with organised, terrorist or subversive crime, but also the danger of re-establishing such links. In fact, although the Constitutional Court has expressed the need to exclude the risk of a future re-establishment of criminal links, the legislative reform places this negative proof [or allegation] on the prisoner, while this burden would seem to fall more properly on the other party, the one who wants to prevent release, because it is one thing if a lifer lets one glimpse 'positive' elements such as to reasonably suppose the will to re-establish links with criminality, elements that could and should form the subject of positive proof by the Public Prosecutor; it is another matter to make the granting of the benefit conditional on the *probatio diabolica*, on the prisoner's part, of elements that would make it possible to prove the lack of a danger of re-establishing links with criminality.
The new rule, moreover, is based on concepts that are too elastic, such as 'context' or 'indirect connections', which are ductile and instrumental to the point of allowing, in some way, to keep the lifer always in prison, lacking a reference, a really demonstrable substratum and, therefore, in practice interpretable almost at the magistrate's pleasure. It therefore appears that the government, to the absolute presumption has wanted to replace one that is only formally relative, but substantially almost impossible to overcome, thus 'betraying' the spirit that can be drawn from the constitutional principles, even in the case of non-cooperation. The rationale that can be drawn from Italian and European constitutional jurisprudence, which has matured to date, is that the lack of cooperation itself cannot be taken as a diriment index, excluding as such the re-education of the lifer. The amendment, on the other hand, although formally attempting to comply with this guideline, in fact betrays it, emptying it of real content (De Vito, 2022, p. § 6).

It should be added that Decree-Law No 162/2022 for non-cooperating lifers has modified the minimum threshold of years of imprisonment to be eligible for conditional release: no longer the twenty-six years of sentence required by Article 176 of the Criminal Code, but thirty years. Finally, the sentence can be extinguished no longer after five years, but ten years from the conditional release and probation application, which therefore – if the prisoner succeeds in overcoming the difficulties of the relative presumption of social dangerousness – will last longer than in the past and will always entail the prohibition to meet or maintain contact with persons convicted of crimes of serious social alarm (those referred to in Article 51 of the Code of Criminal Procedure) and with persons subject, in certain cases, to personal or patrimonial prevention measures.

The discipline of hard 'prison' in Italy: genesis and purpose

One cannot speak of life imprisonment without touching on the delicate subject of the so-called 'hard prison' in Italy, i.e. the provision of Article 41 *bis* of the Italian Prison Ordinance, a special detention regime to which, in 2023, 740 people were subjected. In Italy, in fact, inmates subjected to this special detention regime are often sentenced to long prison terms and approximately 17% are sentenced to life imprisonment. If it must be said that the special detention regime is also, and not infrequently, applied to persons still awaiting trial or not definitively sentenced, it must also be pointed out that in most cases the offences generating both the sentence to life imprisonment and the so-called 'hard prison' regime are those of mafia-type organised crime. This is why the life sentence and the special detention regime pursuant to Article 41 *bis* of the penitentiary order are intimately connected.

Ever since the entry into force of the Prison Rules Act of 1975, practices concerning prison life seemed to be oriented towards a greater openness to the maintenance of family relationships and, more generally, of emotional ties, also and above all with the aim of succeeding in achieving the re-educative purpose of punishment (§ 6).

The complex of disciplines enshrined in the prison regulations, however, especially in the light of the terrorist acts that occurred in Italy in the 1970s, began to undergo changes, the most important certainly being the one concerning the introduction of Article 90 of the prison regulations, the original text of which, contained in Law no. 354 of 26 July 1975, was immediately subject to reform due to the worrying advance of terrorist groups and criminal organisations. In an emergency scenario, the Italian legislator felt the need to differentiate prison treatment for those persons

considered most dangerous, as they were more likely to commit crimes. Hence the drafting of Article 90 of the Prison Ordinance, which provided for special rules of treatment within penal institutions.
The text of this article, entitled «security requirements», now repealed, provided that whenever serious and exceptional reasons that could compromise public order and security arose, the Minister of Justice could suspend the application, for a fixed period of time, of the ordinary rules of prison treatment laid down by law, which were in conflict with that need for order and security. The rationale was, therefore, to contain, in special prisons or in separate sections, those subjects considered to be promoters of disorder and who, therefore, in the prison context could generate protests and, therefore, compromise the internal security of the prison.
The rule set out in the aforementioned Article 90, however, although initially conceived to remedy any difficult internal management situations in penal institutions, subsequently began to be recalled whenever it was necessary to transfer persons who had prominent positions in criminal organisations to these special prisons, not only to avoid the occurrence of violent episodes or protests in the prison, but also to remove the other inmates from their subjection.
In these special prisons or special sections, in order to better fulfil the provisions of art. 90 Prison Ordinance, a series of restrictions – which cannot be fully discussed here – were introduced, in particular the ban on organising cultural, sporting and recreational activities, the ban on participation in prisoners' representations in charge of food and library control, the impossibility of talking to visiting relatives unless separated by glass panes, the ban on being able to telephone relatives, the reduction of air time and the control of correspondence with other prisoners.
Underlying the application of Article 90 of the Prison Ordinance, as mentioned above, is the need to deal with an emergency situation, and the verification of the existence of such a situation passes through the Ministry of Justice, which, having recognised the urgency of applying the differentiated regime, establishes the deadline for the suspension of the ordinary treatment rules provided for by the Prison Ordinance.
Article 90 of the Prison Law was repealed by Law No. 663 of 10 October 1986 – better known as the Gozzini Law – and, in its place, Article 41 bis of the same law was introduced, which initially contained all the provisions in a single paragraph. In substance, there was no change, as the text was not renewed compared to that of the previous discipline, except in the part clarifying what were the prerequisites legitimising the power of the Minister of Justice to suspend the ordinary rules of treatment. Article 41 bis, at least in its original wording, referred precisely to exceptional cases

of revolt or other emergency situations. The main innovation lay, therefore, in a limitation of the Minister's discretion in applying the differentiated regime. In fact, the old Article 90 of the penitentiary order was much more generic and this had allowed prisoners whose social dangerousness had not even been carefully assessed to be subjected to this differentiated regime.
The wording of 41 bis, on the contrary, placed an important limit on the power of the administrative authority, providing that the occurrence of extraordinary facts was necessary for its application.
However, the door of Article 41 bis of the prison regulations, by means of Decree-Law No. 306 of 8 June 1992, was widened with the introduction of a second paragraph, dedicated to solitary confinement in places of punishment for leaders and affiliates of mafia-type criminal organisations, such as the notorious Cosa Nostra[6]. This reform was considered necessary by the legislator following the attack by the Sicilian mafia on the State, with a long trail of deaths and bloodshed, which prompted a change of pace and a response as a counteroffensive by the State to mafia power.
The first decrees applying the 41 bis prison order were not issued *ad personam*, but rather were cumulative measures addressed to several persons convicted of very serious crimes, with the validity of the measure set at one year, but extendable indefinitely.
It has already been said that the differentiated regime of Article 41 bis of the penitentiary order was conceived as a tool to deal with an emergency, but with Law No 279 of 23 December 2002, this special prison regime was 'stabilised' and became a permanent tool of special prevention. If, on the one hand, the new legislation was concerned with typifying the content of Article 41 bis, on the other hand, it regulated the procedure for challenging the implementation decrees and the extension of the special prison regime, attributing full powers to the supervisory court.
An important aspect of the 2002 legislative amendment is certainly the exclusion of the application of the special regime solely on the basis of the offence title. On the basis of the previous constitutional jurisprudence (Constitutional Court, 5 December 1997, no. 376), in fact, it has been established that in order for Article 41 bis of the penitentiary order to be applicable, it is necessary to ascertain the danger of the existence and permanence of links with the organised crime to which he belongs. (Corvi, 2010, p. 138). The purpose of the institute, then, is to be found not so much in preventing a «collective dangerousness», but more in intercepting an individual dangerousness, i.e. the risk that a given prisoner may continue criminal activity even from inside the prison, precisely by being able to rely

[6] It is a mafia-terrorist criminal organisation present in Italy and especially in Sicily.

on links with external organised crime (Della Bella, 2016, p. 225).
After a few years, the 2002 reform was considered by the legislator to be an insufficient response to organised crime, so much so that the need was felt to intervene again on the special prison regime, and this because the criminal associations had returned to forging ties with the imprisoned bosses who, although subjected to the regime under Article 41 bis, continued to give orders and dictate operational and economic rules to the mafia group of reference. Law No. 279 of 2 February 2009 thus redesigned the wording of Article 41 bis of the penitentiary order.
The text of Article 41 bis of the Prison Ordinance, which is currently in force, is entitled «emergency situations» and is the synthesis of a series of interventions aimed at perfecting, in a comprehensive manner, the special prison regime that, as in its original formulation, entrusts the Ministry of Justice with the possibility of suspending the application of the ordinary prison treatment rules. First of all, it is necessary to identify the addressees of the provisions of Article 41 bis of the prison regulations. From reading the second paragraph, it is easy to understand that the addressee of the provision is a prisoner either final, i.e. with a sentence that can no longer be appealed, or still awaiting trial. The criterion for selecting the recipients of the special prison regime refers, explicitly, to Article 4 bis, para. 1, Prison Regulations, therefore, in a nutshell, the application of this regime is addressed to persons who have committed one or more "qualified hostile offences"[7]. In practice, however, mostly mafia-type offenders are subjected to the Article 41 bis regime.
The investigation, aimed at ascertaining the social dangerousness of the recipients of the differentiated prison regime, must take into consideration, as indices, the degree of operativeness on the territory of the criminal association to which the detainee belongs, as well as the role played in the mafia organisation by the same subject. A natural consequence of what has been said so far is that the functional prerequisite, although it exists, is lacking in the case in which the detainee decides to cooperate with justice pursuant to Article 58 ter of the penitentiary order.

[7] In particular, offences for the purposes of terrorism, including international terrorism or subversion of the democratic order through the perpetration of acts of violence; offences of mafia-type criminal association; offences committed by availing oneself of the conditions provided for by mafia-type criminal association, or in order to facilitate the activities of mafia-type criminal associations; offences of reduction to or maintenance in slavery or servitude; child prostitution; offences of pornography and child pornography; offences of trafficking in persons: the crime of group sexual violence; the crime of buying and selling slaves; the crime of kidnapping for the purpose of robbery or extortion; the crime of criminal association for the purpose of smuggling; the crime of association for the purpose of drug trafficking.

The measure applying the special detention regime takes the form of a reasoned decree issued by the Minister of Justice, also at the request of the Minister of the Interior, and, therefore, is taken when there are serious reasons of order and security, with reference to the capacity of certain detainees to maintain links with the criminal, mafia, terrorist or subversive association to which they belong. Before the decree is issued, the public prosecutor conducting the preliminary investigations or the proceeding judge must be consulted, and the necessary information must be acquired from the National Anti-Mafia Directorate, the central police bodies and those specialised in combating organised crime.

The measure applying or extending the special prison regime, therefore, is the consequence of the collection of elements demonstrating a danger to public safety, through a collaboration between the Department of Prison Administration, law enforcement agencies, the National Anti-Mafia and Anti-Terrorism Directorate and the District Anti-Mafia Prosecutor's Office. The ministerial decree applying this regime is considered, according to one thesis, an administrative act of an authoritative nature with a preventive purpose, which aims to ensure the maintenance of public order and security; another thesis, however, gives the ministerial decree a 'justicial content' (Ardita, 2007, p. 80).

The element on which the applicability of the ministerial measure for the special prison is based is – as we have already said – to be found in the "social dangerousness" of the prisoner or inmate. If this were not the case, and if, therefore, the limiting measures of Article 41 bis of the penitentiary order were personalised and based on elements other than "social dangerousness", we would be faced with a regime that would perform a retributive function, in contrast with the very purpose of the institution which is, instead, that of limiting communications as a preventive effect of the commission of offences.

This preventive function of the ministerial decree is confirmed in the judgment of 15 December 2014, no. 52054 of the Court of Cassation, which specifies that the differentiated detention regime, despite the amendments, has retained its preventive nature, without ever turning into a 'differentiated penalty'. The Constitutional Court has also expressed itself in this sense, specifying that the limitations of Article 41 bis of the penitentiary order cannot take on the appearance of a criminal sanction, but only «of caution in relation to current dangers to order and security, concretely linked to the detention of certain convicted persons or defendants for offences of organised crime" (Constitutional Court, 5 December 1997, no. 376).

Turning now to the conditions for the applicability of the ministerial

measure, it is appropriate to reiterate that a prior assessment of the "social dangerousness" of the detainee recipient of the measure provided for in Article 41 bis of the penitentiary order is necessary. Such dangerousness must be configured as "qualified", i.e. the detainee must have the capacity to maintain or resume relations with the criminal association to which he belongs. It can be said, then, that for the first application of the measure provided for in Article 41 bis of the penitentiary order, and also for its extension, an inspection is required not only on the actuality of the criminal contacts, but also on the possibility and capacity of the detainee to resume such contacts with the association to which he belongs and to bind himself with it.

As already mentioned, the effectiveness of the measure ordering the special prison regime has a fixed duration. This is enshrined in Article 41 bis, para 2 bis, which sets this duration at four years, «extendable in the same form for subsequent periods, each equal to two years»; extension is necessary when the ability to maintain links and connections with the criminal association has not disappeared (Montagna, 2004, 1289). Of course, in order to proceed with the extension, it is necessary for the investigation aimed at verifying the 'social dangerousness' to be conducted again, and this follows the same procedure as the issuance of the measure of first application. The extension, then, must also be based on the collection of significant elements demonstrating the detainee's continuing ability to maintain contacts with organised crime, thus following the parameters dictated by Art. 41 bis, para. 2 bis of the penitentiary order. The Court of Cassation, with reference to the extension of the special prison order, stated that «the existence of links with a criminal, terrorist or subversive association, required by the rule, does not have to be demonstrated in terms of certainty, it being necessary and sufficient that it can be reasonably considered probable on the basis of the cognitive data acquired» (Cort. cass., sez. I, 6 February 2015, no. 18791).

The measure subjecting a detainee to the regime provided for in Article 41 bis of the prison regulations must be adequately motivated. This necessity arises from the fact that this is a prison treatment that has restrictive effects that significantly affect the freedom of the person subjected to the differentiated regime. The justification must be complete and must contain all the elements underlying the reconstruction of the "social dangerousness"and, therefore, supporting the thesis according to which keeping the prisoner under the ordinary regime would run the risk of public order and security problems. In particular, it is necessary to refer to the information according to which the subject of the measure is "socially dangerous", as well as to the fact that he is in a position to keep in contact or to establish contact again with the criminal group to which he belongs, still active and operating outside. A similar

discourse applies to the measure extending the differentiated regime: in this case, however, the grounds must be based on the findings from which it can be deduced that the reasons of public order and security are current. In the decree of extension, therefore, it will be necessary to retrace the assumptions that led to the issuance of the first ministerial measure, reaffirming, then, the need to reconfirm the subjection to the differentiated regime, since there has been a new recognition of the dangerousness of the detainee and of his capacity to maintain contacts with the criminal association. Such 'qualified' dangerousness, according to jurisprudence, is to be verified by means of the so-called 'legal proof', whereby in the absence of unequivocal elements concerning the disappearance of links with the criminal group, membership of the same is to be considered current and permanent. The motivation is fundamental, as it is on this that the detainee can base his complaint against the administrative decision to apply the special prison regime.

Prison life *under* Art. 41 bis: rules and limitations for detainees in 'hard prison'

The name 'hard prison' of the differentiated regime in Article 41 bis of the penitentiary order makes it clear that the prisons housing inmates subjected to special imprisonment are maximum security prisons and inside them the harshest face of the State is shown.

Prisoners or internees receiving a measure applying the 41 bis prison regime come from the high-security circuits (a circuit housing prisoners accused or convicted of offences under Article 4 bis of the Criminal Code or Article 74 of Presidential Decree 309/90), but once they have entered the 'hard prison' circuit, they have to start reckoning with a series of much stricter limitations. If in the high-security circuit they could enjoy four hours of daily air time, telephone home once a week for six minutes, have four interviews a month, buy groceries at the prison's 'supermarket'[8] and use the gas cooker in their cell for cooking, as well as attend study courses and listen to mass on Sunday mornings in the prison chapel, with the special regime of the 'hard prison' all this is no longer allowed. Even in the matter of searches, the submission to the differentiated regime tightens the modalities: the ordinary search, carried out with non-invasive instruments, such as the metal detector, is replaced by the extraordinary search, which even provides for the undressing of the detainee at the end

[8] Overstay is the possibility for inmates to purchase, following a formalised procedure and with authorisation, products from the outside contained in a list of eligible items.

of each of his movements and before his return to the ward and cell.
The custody and surveillance of this category of detainees is managed by the mobile operational group (GOM), composed of selected prison administration personnel, who guard the twelve special regime wards under Article 41 bis distributed throughout the country.
The cells, at least in most cases, have a surface area of six square metres, in which an iron cot and a stool are placed, both nailed to the floor, then again a small table and a wardrobe, this time fixed to the wall. While ordinary prisoners have the possibility to engage in recreational activities, as well as reading, having access to the prison libraries, for prisoners under the 'hard prison' regime this is not allowed.
It is not even possible to cook because in the cells of the Article 41 bis regime, pots and pans cannot be kept and it is forbidden for prisoners to buy food requiring cooking. A gas cooker is not allowed in the cell, which they may use only at certain times and in places other than the detention room, by order of the prison administration, in the manner established by the Institute management.
One does not work, except through ward activities: there is, in fact, the figure of the worker, who is in charge of cleaning the common areas of the ward, that of the food carrier, who distributes the food in each cell, passing in front of them with a trolley, and that of the footman, who is a personal assistant, the person who is seen as a prisoner that assists another inmate who is ill and unable to perform even the simplest activities of daily life.
Important restrictions are linked to the so-called 'air hour', i.e. the time of day when they can leave their cells to go for walks, in places in the open air, which in prison jargon are called 'promenades'. In the regime of 'common' prisoners, the air time is done together with all the prisoners in the same section, whereas in the case of prisoners subject to the Art. 41 bis regime it is organised in small groups; they must be 'compatible subjects', thus referring to the impossibility of bringing together prisoners who belong to the same criminal organisation or alliance, or even to organisations operating in neighbouring territories; meetings between prisoners from the same city or region are also prohibited. For this reason, the head of the department will have to study the groups, of four persons, which must be composed of individuals who have never met before their entry into prison or just casually, very carefully.
Lastly, as mentioned at the beginning, this category of detainees undergoes a strip search: the search is carried out upon returning to the cell and, although it does not have to be validated by the judicial authority, it must in any case comply with the criteria established by the Constitutional Court, which has clarified that it should not be used in ordinary situations,

but only if internal security requirements emerge or if the detainee is dangerous due to concrete facts (Constitutional Court, 22 November 2000, no. 526). Prisoners subject to the special regime are also subject to continuous video surveillance of their cells.

It is not possible, at least here, to address in detail the many constraints to which prisoners in the differentiated regime are subjected, so we will only focus on a few, by giving examples.

Subparagraph (b) of para 2c of Article 41 bis of the penitentiary order regulates the matter of interviews with family members. The interview could be a form of communication for the detainee to continue to convey directives and orders to the outside world, thus carrying on his mafia activity and maintaining his top position within the criminal syndicate. Prisoners under the ordinary regime may have a maximum of six interviews per month; for those subject to the regime provided for in Article 4 bis of the penitentiary order, on the other hand, there are four interviews and they may be held with family members and cohabitants, lasting one hour, subject to the authorisation of the director of the penal institution. On the other hand, for prisoners subject to a differentiated regime, there is only one interview per month, which may only be held with family members and cohabitants. There is no minimum or maximum duration of interviews, as stated in the general rules.

With regard to the way in which interviews are conducted, while for prisoners under the ordinary regime these take place indoors without any partition or outdoors in designated areas, especially if there are young children present, supervised by prison police staff, in the case of prisoners under the special regime the interviews take place in rooms that are furnished in such a way as to prevent the passage of objects: there is, in fact, a full-height glass partition separating the detainee from the visitor, and they speak by using an intercom; the interviews of this category of detainees are subject to auditory control and are also recorded, subject to the reasoned authorisation of the judicial authority. There are, however, exceptional cases for which the glass partition obligation is waived, in the case of imminent danger of death, the celebration of a marriage or the birth of a child (Fiorentini, 2013: 198). Again, in cases of impossibility or serious objective difficulty in conducting interviews, the prison administration must arrange for the interview in the form of a video call (Cort. cass., 11 August 2020, no. 23819).

The tightening of the regime also had repercussions, of course, on the subject of interviews with the defence counsel. With the legislative change of 2009, i.e. the amendment of paragraph 2 of Article 41 bis of the penitentiary order, interviews with defence counsel were allowed in the number of three per week

and the restrictions provided for interviews with family members did not apply in the way they were carried out, i.e. with partition glass and intercom, while the quantitative limits remained. The latter aspect was the subject of a ruling by the Constitutional Court, which recognised a compression of the right of defence (§ 4).
The aim of limiting and, to some extent, precluding communication with the outside world could not but lead to a further restriction for prisoners subjected to a differentiated prison regime, namely that of correspondence which, pursuant to Article 41 bis, para. 2 quater letter e) must be censored, except for the one held with members of Parliament or national and European authorities having jurisdiction in matters of justice.

The regime of Art. 41 bis of the Italian penitentiary order in Italian constitutional jurisprudence

Since its introduction, the institution governed by Article 41 bis of the Prison Ordinance has received much criticism, so much so that it has been the subject of legitimacy scrutiny on numerous occasions. The harsh censures have been made to highlight the character of extreme and, at times, gratuitous affliction, as well as to highlight the various profiles of incompatibility with the protection of fundamental individual rights (Nicosia, 2009, p. 1245).
Soon, therefore, the wording of Article 41 bis of the penitentiary order came up against censures of unconstitutionality, especially with reference to the possibility of an unlimited derogation from the rules of prison treatment. The Constitutional Court, using interpretative judgments of rejection[9] , has rejected most of the matters of constitutional legitimacy brought up, offering, however, hermeneutical indications that, through a constitutionally oriented reading of Article 41 bis, have tended to respect the fundamental principles of the prison system. For this reason, it is important to recall the decision by which the Constitutional Court identified the so-called "external limits"to ministerial power (judgment No. 349 of 28 July 1993). The Court, in essence, affirmed that the prison administration has the power to adopt measures concerning the treatment of detainees in the penitentiary circuit, but always guaranteeing respect for the constitutional principles that guarantee individual freedoms compatible

[9] These are judgments in which the Italian Constitutional Court rejects the question of the legitimacy of a rule interpreted in a certain way. In essence, the Court, among the possible interpretations of a rule, declares the one that is not incompatible with the Constitution.

with the state of detention, the re-educative purpose of punishment and the right of defence. On the other hand, the Constitutional Court has recognised that the judicial authorities may adopt measures affecting the quantity and quality of the sentence (Constitutional Court, 28 July 1993, no. 349). With another important pronouncement, the Constitutional Court sought to re-establish a legitimate balance between the prerogatives of the prison administration and the constitutional rights of detainees, especially with reference to the failure to provide for a system of appeal to the judicial authority of ministerial decrees providing for the application of Article 41 bis of the Prison Ordinance. The Constitutional Court, in fact, rejected the question raised by the Surveillance Court of Milan, specifying however that, in cases where there were no provisions on the system of appeals, if there was a violation of fundamental subjective rights, the legitimacy of the decrees could be reviewed by the judicial authority, in particular by the Court of Supervision (Constitutional Court, 23 November 1993, no. 410). The Constitutional Court, again, rejected the censures in the abstract of the special regime of Article 41 bis, specifying that any violations of the fundamental rights of detainees must be sought not so much in the wording of the law, but rather, case-by-case, in the individual application measures (Constitutional Court, 5 December 1997, no. 376).

The Constitutional Court, on the other hand, has ruled, albeit partially, on the unconstitutionality of Article 41 bis of the penitentiary order, with a judgment that declared the illegitimacy of para. 2-quater, letter b), last sentence, in the part in which it quantitatively limits telephone calls and interviews between the detainee under special regime and the defenders (Constitutional Court, 20 June 2013, no. 143), marking a further step «in the path of recovery of those constitutional values that have been rediminished by the amendments made to the regime through Law 94 of 2009» (Corvi, 2013, p. 1189). It is not possible here to deal in detail with the observations made by the Constitutional Court in pronouncing this conclusion, but the decision also establishes some key principles related to the entire system (Marini, 2022, p. 12).

The second declaration of illegitimacy of Article 41 bis occurred with a pronouncement that addresses a very circumscribed issue, relating to a provision introduced by Law No. 94 of 15 July 2009, of which Article 2, para. 25(f)(3) was censured, in the part in which it "requires that all necessary security measures be adopted to ensure that the absolute impossibility for detainees under a differentiated regime to cook food is ensured" (Cort. cost., 26 September 2018, no. 186). The ruling moves within the framework of the internal parameters of legitimacy, in particular Articles 3, 27 and 32 of the Italian Constitution, not evoking instead

supranational parameters, derivable in particular from the European Convention on Human Rights. The Court noted the blatant unreasonableness of the prohibition, which was considered «incongruous and unnecessary in the light of the objectives to which the restrictive measures authorised by the provision in question are directed». A measure that configured an unjustified derogation to the ordinary prison regime, endowed with a «merely and further afflictive» value (Constitutional Court, 26 September 2018, no. 186).
A further regulatory provision characterising the special detention regime is that of the prohibition of exchanging objects between prisoners. The issue was brought before the constitutional judges, who declared the illegitimacy of Article 41 bis, para. 2 quater, lett. f), Prison Rules, in the part in which it provided for the adoption of the necessary security measures aimed at ensuring «the absolute impossibility of communicating between inmates belonging to different social groups, exchanging objects" instead of «the absolute impossibility of communicating and exchanging objects between inmates belonging to different social groups» (Constitutional Court, 5 May 2020, no. 97), clarifying, however, that the possibility for the prison administration to regulate the modalities of exchange remains firm and that any limitations must be justified by certain requirements, subject of specific and express reasons, which may be reviewed by the supervisory judge.
The Constitutional Court found itself, once again, ruling on the relationship between the differentiated regime and the right of defence, declaring illegitimate letter e) of Article 41 bis, para. 2 quater, Prison Regulations, in the art in which it did not exclude correspondence with the defence counsel from being subject to censorship (Constitutional Court, 2 December 2021, no. 18). In order to reach this decision, the constitutional judges referred both to their own precedents, in particular sentence no. 143 of 2013, and to the rulings of the European Court of Human Rights (ECHR, 20 January 2009, Zara v. Italy), considering the provision «entirely inadequate» and «certainly excessive" with respect to the primary purpose of the differentiated regime, i.e. to prevent the detainee from continuing to maintain relations with the criminal organisation to which he belongs.
The Constitutional Court's objective, which can be deduced from the aforementioned judgments, seems to be to bring the direction taken by the legislature, first, and by the prison administration, later, back into 'tracks' compatible with constitutional principles.

The 'hard prison' in European case law

With regard to persons deprived of their liberty, Art. 3 ECHR imposes a positive obligation on the States to ensure that they are detained in conditions compatible with respect for human dignity, that the manner in which the measure is carried out does not subject them to a debasement or ordeal the intensity of which exceeds the inevitable level of suffering resulting from detention, and that, taking into account the practical requirements of imprisonment, the health and well-being of the detainee are adequately ensured (ECHR, Kudla *v.* Poland, no. 30210/96, 2000; Enea *v.* Italy, no. 74912/01, 2009). If these parameters are taken into account, the special regime of Art. 41 bis of the penitentiary order could be in conflict with Art. 3 of the European Convention on Human Rights, as the limitations and afflictions to which one is subjected in such a regime could go beyond the suffering inevitably connected with a legitimate form of treatment or punishment (ECHR, Labita *v.* Italy, no. 26772/95, 2000).

The problem of the compatibility of the Art. 41 bis prison regime with the prohibition enshrined in Art. 3 of the European Convention on Human Rights has arisen not only because of the numerous appeals to the Court censuring detention conditions and treatment contrary to the sense of humanity, but also in the light of the reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment (Cpt), which has observed that the Art. 41 bis is one of the «among the 21 harshest regimes that the Cpt has hitherto been given to observe», and *ad hoc* recommendations have been made, aimed in particular at making the isolation regime to which detainees are exposed less intense (Report to the Italian Government on the visit made by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment and Punishment to Italy from 22 October to 6 November 1995, § 91).

In spite of the harshness of the regime and the numerous criticisms from doctrine and the Cpt, the Edu Court, from the very first judgements on the subject, considered it legitimate because it would not reach the threshold to constitute a violation of Article 3 of the ECHR, because such a regime would be necessary to guarantee order within the prison establishments and public safety, provided that, in particular cases, the dignity of the prisoner is respected. Already since the Natoli case, the then European Commission had considered that the regime under Article 41 bis gave rise to a form of social isolation that was only partial, since forms of contact with other persons were in any case ensured, albeit in a reduced manner, and the possibility of working or carrying out other activities in prison was not

entirely excluded. The measure, therefore, did not reach the threshold necessary to be considered an inhuman or degrading treatment (ECHR, Natoli *v.* Italy, no. 26161/95, 1998; ECtHR, Messina *v.* Italy (2), no. 25498/94, 30, 2000). This, however, has not prevented convictions against Italy for violating Article 3 of the ECHR reagarding detainees subject to the Article 41a regime, such as the one in the Labita case, but not for the rigidity of the detention regime as such, but for individual episodes of violence within the special prisons.

Having clarified that the special regime under Article 41 bis, according to the Edu Court, is not to be considered, as such, as inhuman or degrading treatment, it is appropriate to verify whether there are any factors which, in addition to the conditions of partial isolation, may in some way further aggravate the severity of the regime and, therefore, raise a more stringent problem of compatibility with Article 3 ECHR.

It has already been observed that a treatment, in order to violate Article 3, must reach a minimum threshold of severity: it is necessary to assess the elements of the concrete case, such as the duration of the treatment, its physical and mental effects and, sometimes, the sex, age and state of health of the detainee (Cedu, Price *v.* United Kingdom, no. 33394/96, 2001; ECtHR, Mouisel *v.* France, no. 67263/01, 2002; ECtHR, Gennadi Naoumenko *v.* Ukraine, No. 42023/98, 2004).

The time factor, then, is the one that can most affect the legitimacy of the Article 41 bis regime, as it is capable of transforming a detention regime from legitimate to illegitimate (Della Bella, 2016: 328). Although it has always been considered a form of non-absolute solitary confinement (ECHR, Ercolano *v.* Italy, no. 9870/04, 2008), the Court has observed that even relative solitary confinement regimes, if applied for long periods, can, in the absence of adequate physical and mental stimulation, cause, in the long term, harmful effects destined to take the form of a deterioration of the detainee's mental faculties and relational abilities (Minnella, 2004, p. 206).

The Court, in its various rulings, has always recognised in general that the prolonged application of certain restrictions may place a detainee in a situation that could constitute inhuman or degrading treatment, however, it has stated that it cannot identify a *priori a* precise duration to determine the moment from which the minimum threshold of seriousness for a violation of Article 3 of the ECHR may be considered to have been reached (ECtHR, Gallico *v.* Italy, no. 53723, 2005). The Court, moreover, specified that the prolonged application of the regime must be examined in light of the circumstances of the concrete case, in particular it must be established that the renewal and extension of the restrictions are well-founded, that they do

not therefore constitute a mere repetition of restrictions that can no longer be justified on their merits (Enea *v. Italy*, no. *74912/01*, ECR, no. 74912/01, 2005). Italy, no. 74912/01, 2009; CEDU, Argenti *v.* Italy, no. 56317/00, 2005; CEDU, Asciutto *v.* Italy, no. 35795/02, 2007; CEDU, Paolello *v.* Italy, No. 37648/02, 2015). These are important statements of the Edu Court, which, however, has always held that there is no violation of Article 3 ECHR due to the prolonged application of Art. 41 bis, even in cases of the application of the regime for more than twelve years, as in the Gallico case, and this on the basis of two arguments: on the one hand, the prolonged application of the restrictions appeared justified in the light of the requirements of prevention; on the other hand, it was held that the proof that the prolonged application of the regime had caused physical or psychological effects on the applicant that violated Article 3 ECHR had not been reached.

Only in one case has the Edu Court recognised a violation of Article 3 as a result of a prolonged application of a rigorous detention regime, in the Öcalan case, which was followed by the condemnation of the Turkish State for subjecting the applicant to almost absolute solitary confinement for approximately ten years (ECHR, Öcalan *v.* Turkey, No. 24069/03, 2014).

The Öcalan case – despite the fact that the Turkish regime was considered harsher than that of Article 41 bis of the Italian penitentiary order – can serve as a warning: if it is possible to deduce from the Turkish case that detention regimes stricter than 41 bis, if applied for ten years, are contrary to Article 3 ECHR, even 41 bis, if applied for very long periods, can reasonably be considered an inhuman and degrading treatment. One thinks of the case of the Mafioso Leoluca Bagarella, subjected to the special regime since 10 July 1995, in whose case the European Court of Human Rights, in 2008, did not recognise a violation of Article 3 of the European Convention on Human Rights due to the prolonged application of the regime (Bagarella v. Italy, 15625/04, 2008). Can an inhuman and degrading treatment be found now, after twenty-nine years of imprisonment under a differential regime, given what was stated in the Öcalan judgment?

From the most recent case law, however, it seems that the European Court of Human Rights, albeit timidly, is beginning to show greater sensitivity to the issue and this can be said in the light of the ruling on the case of the Mafia boss Bernardo Provenzano, whose last years of detention were marked by various medical events, due to the numerous pathologies from which the detainee suffered and their progressive worsening, also characterised by a serious deterioration of cognitive functions, which ended up limiting and cancelling even his communication skills. The

Strasbourg judges, hearing the appeal against the measure extending the regime a few months before his death, going beyond what had hitherto been generically argued on the subject of the prolonged application of the special detention regime, considered it necessary to verify whether the Italian authorities had carried out an effective assessment of the detainee's dangerousness, taking into consideration any possible change in the applicant's situation that might question the continuing need for such restrictive measures (ECHR, Provenzano *v.* Italy, no. 55080/13, 2018).

Punishment and social reintegration

In criminal matters, among the constitutional principles, of particular importance is Article 27(3), according to which «punishments may not consist of treatment contrary to humanity and must aim at the re-education of the convicted person». The lexical tenor is unequivocal: the provision enshrines the principle of humanity and the re-educative purpose of punishment. Already at the end of the 19th century, moreover, with the theorisation of Franz v. Liszt, individual intimidation and neutralisation were flanked by aspects of true resocialisation (Litz, 1883, p. 51).

It is important to clarify that, in the general landscape, there is no 'winning' theory of punishment, as the legitimacy of criminal sanction varies depending on the type of state (Marinucci, Dolcini, Gatta, 2018, p. 5). The connotations that are outlined in our Constitutional Charter are those of a social state under the rule of law, secular and pluralist. In criminal matters, then, what marked a profound novelty in Italy was precisely the choice made by the Constituent Assembly, since – it is clear – it wanted to consecrate *expressis verbis* the teleological guideline of the re-education of the convicted person, closely linked to the personalistic and solidaristic inspiration of our State (Mongillo, 2009, p. 179). It is clear, in fact, that in a social state governed by the rule of law, the relationship between authority and the individual has a completely different face from that of an authoritarian or totalitarian state or a confessional state.

The State – at least according to the Italian Constitutional Charter – cannot use punishment as a mere deterrent, nor can it have recourse to it to achieve transcendent purposes, which pertain to a sphere other than that of civil coexistence (Dolcini, 2019, p. 17). The question of what are the legitimate purposes of punishment, however, remains very complex and of permanent topicality, also because it is affected by social conjunctures, as well as by the political-legal system of reference.

After the first attempts by both doctrine and constitutional jurisprudence to curb the innovative thrust of the constitutional dictate, a 'syncretistic'

approach, hinging on the concept of the multifunctionality of punishment (Mongillo, 2009, p. 179), eventually consolidated. It is precisely the multifunctional theory of punishment that has long been accepted by the Constitutional Court through a series of rulings (Vassalli, 1961, p. 296). Fundamental, in this perspective, have been the rulings on common life imprisonment, in which the Court stated that the re-educative purpose is not the only one attributable to punishment and that its non-implementation, with specific reference to certain types of punishment, could not justify a declaration of unconstitutionality (Constitutional Court, 12 February 1966, no. 12; Constitutional Court, 22 November 1974, no. 264). In multifunctional constructions, the idea of re-education is of particular importance because it is not only considered a constitutional cornerstone, but also an achievement of civilisation (Mongillo, 2009: 179). The process of re-education is understood as «a commitment of the State towards the delinquent» (Palazzo, Viganò, 2018, p. 33).

The last forty years of jurisprudence, however, have been marked by a slow but very significant evolution that, moving from the polyfunctional conception of punishment in the perspective of a cautious transposition of the re-educative end, has progressively achieved moments of broader valorisation of it, until it came to qualify the re-education of the sentenced person as the main inescapable aim of punishment itself. Hence the overcoming of the polyfunctional theory of punishment and the beginning of the discussion on the claim that its execution is not inhuman. The answer certainly comes from Cesare Beccaria's oldest statement, according to which, in order for punishment not to be seen as pure violence, it must be the minimum possible, i.e. the one absolutely necessary to defend «the deposit of public health» (Beccaria, 1981, p. 65). Punishment, in this perspective, meets the criteria of proportionality and minimisation of the state use of violence. It goes without saying that disproportionate punishment turns into prevarication.

So, it is clear that the principle of re-education is closely connected to the principle of humanity of punishment and therefore to the principle of proportion: it is a synergy brought into play on the one hand by the Constitutional Court and on the other by the European Court of Human Rights. As is well known, in fact, the principle of the humanity of punishment is affirmed not only by Article 27, para. 3 of the Constitution, but also by Article 3 of the ECHR (ECHR, 6 April 2000, Labita v. Italy, no. 119 ff.). The impulse given by the Strasbourg Court to Italy was aimed at intervening both on the content and on the executive modalities of custodial sentences, as well as reconsidering the relationship between custodial sentences and other penalties limiting personal freedom. All this,

of course, to ensure detention conditions that respect human dignity. It is precisely the minimum standards of dignity in the phase of deprivation of personal liberty within the prison that represent a fundamental objective to be achieved not only to avoid trampling on the dignity of the detainee, but also and above all to aspire to achieve the re-educative goal. Our Constitutional Court, in fact, already when it was still embracing the polyfunctional theory of punishment, recognised that «penal treatment inspired by criteria of humanity is necessary for a re-educative action of the convicted person» (Constitutional Court, 4 February 1966, no. 12). The conditions of Italian prisons, however, do not allow one to be very confident, indeed they turn the constitutional premises on punishment into yet another unfulfilled promise. It is no coincidence that the decrease in the overcrowding index - although recorded in the past, except for a new rise in recent years - does not automatically correspond to the respect of Article 3 of the ECHR (Pugiotto, 2016, p. 1204). In the light of this, it emerges that the re-educative capacity of punishment is often limited by the prisoner's conditions of discomfort and suffering, so much so that it is useless to think about actions aimed at social rehabilitation if the preconditions for safeguarding the dignity of prisoners as persons are not created first.

Coming, finally, to the relationship between the re-educative purpose of the penalty and the 'hard prison', the inmate in the Article 41 bis regime – we have seen – lives in an exceptional condition compared to all the other inmates: his social dangerousness, in fact, seems to legitimise a suspension of the ordinary penitentiary treatment and this is aimed at its neutralisation. When, however, one looks only at the social dangerousness, instead of looking at the person, the punishment runs the risk of pursuing exclusively prevention purposes, leaving out the re-education and re-socialisation pathway. According to the Italian Constitution, punishments, all of them, must aim at the re-education of the convicted person, whatever crime he has committed. The fundamental Charter does not allow detention to have [exclusively] a punitive, preventive or retributive character. The special prison regime, moreover, does not appear to have anything reeducative about it because in many ways it is based on restrictions that appear to be physical and psychological harassment contrary even to international human rights conventions. For example, imposing very stringent militias on the possibility of reading books or listening to music, seems to be a merely afflictive, punitive instrument, with no effective function for the exclusion of links with the outside world and without revealing any re-educational capacity, indeed in the latter perspective these activities should be promoted.

Conclusions

The life imprisonment and the special detention regime in Italy are united – in the majority of cases – by the fact that they originate from organised crime offences, in particular mafia offences. The other element that the two institutions have in common is their purpose or, rather, the reasons that apparently justify them. On the one hand, the hostile nature of life imprisonment, which in practice does not allow one to leave prison even after many decades unless one has cooperated with the justice system or other conditions whose proof is very difficult if not impossible, and, on the other hand, the special detention regime with its very penetrating afflictions and limitations, find their apparent rationale in the legislator's desire to prevent the prisoner, if released (in the case of a life sentence review) or from within the prison (in the case of the special regime), from resuming or continuing relations with criminal organisations. To this rationale 'on paper', capable of overcoming a series of censures of constitutionality and violation of the ECHR, in fact, another one is likely to be added, with a less presentable and, therefore, unreported face. The 'life sentence' and the 'hard prison', in fact, in practice lend themselves well to being used as instruments to try to obtain the cooperation of prisoners because, if they cooperate with justice, they will obtain a review of the life sentence and/or the termination of the special detention regime.
This likely discordance between the apparent and the real function of both the life sentence and the special prison regime emerges, for example, from the consideration that cooperation with the law is not in itself a guarantee of severing links with the criminal organisation, because it could be merely instrumental in obtaining prison benefits. 41 bis prison regulations, which do not appear to be useful in preventing communication with the outside world and, instead, appear to be afflictive treatments that, in the end, are only useful to cause greater 'suffering' and thus stimulate cooperation with the law.
If what we have now written is true, i.e. that the real objective of life imprisonment and 'hard prison' in Italy is not so much and only that which formally appears, but that which reality shows, i.e. that of attempting to force the prisoner to cooperate with justice, these institutions pose considerable problems of compatibility with many principles of the Italian Constitution and also of the ECHR. In fact, these are punishments that may be disproportionate, particularly afflictive and that, in any case, do not preserve anything of the re-educative purpose that Article 27 of the Constitution attributes primarily to punishment. Moreover, even if one wished to recognise that the primary purpose of life imprisonment and 'hard prison' is that, declared, of special prevention and security

compromised by the dangerousness of the prisoner, it is sufficient here to recall the verses written in the first decade of the 19th century by Francisco de Goya at the foot of two of his engravings: «*tan bárbara la seguridad como el* delito»[10] and «*la seguridad del reo no exige* tormento»[11] .

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[11] "The custody of a prisoner does not call for torture".

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Original Scientific Paper

Safety and Security of Women Prisoners as a Dimension of the Social Climate in Prisons (The Serbian Experience)[1]

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The main purpose of this paper was to highlight the importance of security as a dimension of the social climate for women who are deprived of their liberty and held in prisons, with an understanding of the specifics of the concept of safety and discipline, i.e., recognising the power dynamics between prison staff and women prisoners as a cornerstone of effective and humane execution of the prison sentence. Given the unique context of the execution of the prison sentence for women prisoners in Serbia, this paper presents the findings from research on the dimension of security conducted at the only prison in which women in Serbia serve the sentence of deprivation of liberty, the Correctional Institution for Women in Požarevac, in 2022. The sample consisted of 91 respondents from both the closed and

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semi-open sections of the facility. The research is part of a three-year project titled Assessment and possibilities for improving the quality of prison life of prisoners in the Republic of Serbia: Criminological-penological, psychological, sociological, legal and security aspects – the PrisonLIFE project, supported by the Science Fund under the Ideas 2020 programme, implemented by the Institute for Criminological and Sociological Research and the University of Belgrade – Faculty of Special Education and Rehabilitation.

Keywords: *Security, Quality of life, Prison, Women prisoners*

Introduction

The security and safety of individuals deprived of their liberty are prerequisites for meeting other relevant standards and norms, and their provision requires respect for fundamental human rights and freedoms. This is of particular significance when considering female prisoners, and selected international instruments, such as the Bangkok Rules,[3] adopted by the United Nations General Assembly on 21 December 2010, specifically address this issue. The Bangkok Rules recognise women prisoners as a particularly vulnerable social group, with distinct needs and requirements in comparison to male prisoners (Barberet & Jackson, 2017; Krabbe & Van Kempen, 2017). In this context, a specific section of the Bangkok Rules pertains to issues of security and discipline, as security, safety, and discipline for all individuals in prison, as well as the recognition of the power dynamics between prison staff and women deprived of their liberty, are the cornerstones of an effective and humane prison system. The provision of external security (manifested in the prevention of escapes) and internal safety (which can be seen as an instrument to prevent disorder) is most effectively achieved by fostering positive relationships between persons deprived of their liberty and prison staff. The separation of women from men in prison, alongside the requirement for female staff to supervise women prisoners, serves to prevent violence and protect women prisoners from violence, abuse and harassment, and is a fundamental standard of human rights for prisoners.

[3] Resolution of the United Nations General Assembly, A/RES/65/229, 65/229. United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules), available at https://www.unodc.org/documents/justice-and-prisonreform/Bangkok_Rules_ENG_22032015.pdf, page accessed on 12 November 2024.

Maintaining order and creating a secure environment for both prisoners and staff is one of the primary tasks of prison administration. The security and order depend on the professionalism of staff, particularly those in security roles, but also on the harmony within the prison, i.e., interpersonal relationships both between prisoners and between prisoners and staff. A sense of insecurity, experiences of violence and abuse, and fears of victimisation can undermine the well-being of convicted individuals, thereby impacting the overall quality of prison life (van Ginneken et al., 2018; Balfour, 2018).

As previously noted, the Bangkok Rules pay particular attention to security and safety, insisting on the separation of women from men in prison. Given that body searches and intimate body searches can cause humiliation and distress, they insist on the adoption of alternative methods as a standard practice in penitentiary institutions housing women deprived of their liberty. Children should never be subjected to intensive body searches.

Personal searches should be conducted in such a way as to ensure that women prisoners' dignity and respect are protected (Rules 19-21). These searches should only be carried out by female staff, who have received proper training in accordance with established procedures. There is also a strong emphasis on the development and implementation of alternative methods for body searches, such as scans, to avoid invasive body searches and minimise the harmful psychological and possible physical impact caused by such searches on women prisoners. Finally, as stated in Rule 21, prison staff shall demonstrate competence, professionalism and sensitivity, and shall preserve respect and dignity when searching for both children in prison with their mother and children visiting their mothers.

Rules 22 and 23 address disciplinary punishment. According to these rules, punishment by close confinement shall not be applied to mothers with children, pregnant women, and breastfeeding mothers. Furthermore, disciplinary sanctions for women prisoners shall not include a prohibition of family contact, especially with children (see more: Kovačević et al., 2024). Instruments of restraint shall never be used on women during labour, during birth and immediately after birth. Finally, the rules provide for the protection of women who experience violence during their time in prison.

Security as a dimension of the social climate in prison includes four aspects of prison life: order and security, which imply a sufficient number of employees to ensure professional supervision and control of the prison environment. The subjective experience of the safety of convicted persons in the sense that they feel secure and protected from injuries, threats and other dangers. Adaptation of convicted persons to life in prison, which is seen through the need or coercion of the convicted person to join informal

groups in prison. The last sub-dimension refers to the presence of drugs, abuse and victimization in the prison environment.

The main purpose of this paper was to emphasise the significance of security as a dimension of the social climate for women who are deprived of their liberty and are held in prisons, with an understanding of the specifics of the concept of safety and discipline, i.e., recognising the power dynamics between prison staff and women prisoners as a cornerstone of effective and humane execution of the prison sentence (Prost, Panisch, & Bedard, 2020). This paper is part of the wider three-year project titled *Assessment and possibilities for improving the quality of prison life of prisoners in the Republic of Serbia: Criminological-penological, psychological, sociological, legal and security aspects* - PrisonLIFE project, supported by the Science Fund under the Ideas 2020 programme, implemented by the Institute for Criminological and Sociological Research and the University of Belgrade – Faculty of Special Education and Rehabilitation. The project, supported by the Science Fund through the Ideas 2020 programme, is conducted by the Institute for Criminological and Sociological Research and the University of Belgrade – Faculty of Special Education and Rehabilitation. The PrisonLIFE project focuses on the quality of prison life for individuals in Serbian prisons, affecting not only their lives within prison but also their life upon release (see more in: Ilijić, Pavićević & Milićević, 2024), with security and its subdimensions being a central component of quality of life in prison for both male and female prisoners (Liebling, 2011; Milićević & Stevanović, 2024).

Among the first findings, those related to women prisoners serving their sentences at the Požarevac Correctional Institution for Women were published. The study analysed the quality of prison life for 91 women prisoners in Serbia, representing 40% of the female prison population in 2022, with the aim of assessing their overall experience, analysing differences in the quality of life across various categories and dimensions of the MQPL (Measuring the Quality of Prison Life), and identifying specific aspects of the prison environment that require improvement. Significant variations were found in the assessments of the prison climate. The findings indicate a relatively low overall quality of prison life, with a substantial proportion of respondents reporting a negative overall experience of life in prison. Only a small percentage expressed a positive view of the quality of prison life. However, relatively positive experiences were reported in the categories of *Conditions and Contact with Family, Harmony,* and *Security*. On the other hand, categories such as *Professionalism* and *Well-being and Development* received lower ratings in our sample, indicating areas for improvement. The highest-rated

dimensions of MQPL were *Adaptation and Distress* (indicating lower levels of significant inner turmoil), while the lowest-rated were *Well-being*, *Bureaucratic Legitimacy*, *Organisation and Consistency*, and *Decency* (see more: Batrićević et al., 2023).

Power and "Authority" of Prison Staff over Female Prisoners

Recognising the implications of power and authority held by prison officers, the varying power dynamics between prison officers and women deprived of their liberty, as well as the responsibility to manage that power and authority appropriately in all situations, understanding the particular vulnerability faced by women prisoners, especially in relation to the application of disciplinary measures, searches, and other restrictions, as well as reactions to sexual and any other forms of abuse in prison, require the establishment of special measures to prevent and combat violence against women prisoners, either by other prisoners or by prison staff. These measures include immediate protection on the one hand, but also continuous support and counseling, physical and mental health care, legal assistance, and independent investigation.

It has long been recognised that the relationship between staff and persons deprived of their liberty is "crucial to the entire prison system" (Liebling, 2011). However, relatively few analyses of the prison sentence for women have focused on staff-prisoner relations, whether by describing their conditions and dynamics or linking their characteristics to broader concepts of power, trust, or legitimacy (Crewe, Schliehe, & Przylylska, 2023). In women's prisons, this power dynamic is particularly evident in staff-prisoner relationships, prompting recent studies to emphasise the complexity and emotional intensity of these interactions (Crewe, Schliehe, & Przylylska, 2023, p. 925-946). Authors of these studies highlight the relative powerlessness and vulnerability of women in prison (Bucerius, Haggerty, & Dunford, 2021; Crewe, Ievins, & Larmour, S., et all., 2022), which is largely shaped by their pre-incarceration life experiences, often leading to forms of dependency and distrust. Viewed from this perspective, many emotionally charged interactions witnessed by researchers "reflect the complex entanglements of power and dependence. Women's reliance on staff reinforced a dynamic of neediness; their lack of power, in combination with their desperation and distress, produced insistent and vociferous forms of challenge; and their biographical experiences acutely sensitive to the use and misuse of authority. For the same reasons, many women were impelled to develop close relationships with officers, while

others were highly passive or detached, based on feelings of fatalism or anxiety" (Crewe, Schliehe, & Przylylska, 2023, p. 941-943).
In this regard, women's prisons pose a particular challenge to models of penal order, authority and legitimacy precisely because "thread of power" and control flows through the complex, charged and ambiguous relational dynamics. These findings are particularly significant given recent literature suggesting that for many women who have experienced trauma, addiction and degradation in the community, prisons can serve as places of refuge, containment and narrative reinvention (Bucerius, Haggerty, & Dunford, 2021, p. 532), however, even when imprisonment can, in certain respects, provide protection and restoration, its mundane power relations can also render imprisonment highly stressful (Crewe, Schliehe, & Przybylska, 2023, p. 941-943). Indeed, much of this stress relates to the same experiences of abuse and exploitation that can make prisons sites of temporary relief. So, while imprisonment might well provide some women with 'the only opportunities available to them to escape dangers or challenges they face in the community and to access basic social welfare provisions' (Bucerius, Haggerty & Dunford, 2021, p. 532), their relational dynamics always risk compounding experiences of trauma, reinforcing feelings of mistrust, and reproducing experiences of powerlessness (Comack, 2018; Kelman et al., 2022). The difficult fusion of care and control that women's prisons generally seek to provide feels particularly threatening for many women, because of how it resonates with abusive and confusing experiences of intimacy and authority in the community (Liebling, 2009).
The issue of performance thresholds , adherence to minimum standards in prison (including those for women), and what defines them as "unsafe" or "minimally safe", as well as "good" or "safer", is a particularly complex one. This issue has preoccupied policymakers and practitioners for quite some time. According to Auty and Liebling, these standards are based on widely accepted statements of principle, but benchmarks are rarely set or explored empirically. The authors believe that there have been few attempts to describe or define higher threshold values – the point at which outcomes become positive or the stated principles are achieved. Given this, we consider the study What is a 'good enough' prison? An empirical analysis of key thresholds using prison moral quality data (Auty & Liebling, 2024) to be of particular significance. In this study, the authors provide an empirical analysis of how quality of life thresholds may be determined using data from 518 Measuring the Quality of Prison Life (MQPL) surveys conducted in prisons in England and Wales (2009–2020), and examine their relationship to five violence outcomes: serious prisoner-on-prisoner assaults, serious assaults on staff, self-harm incidents requiring

hospital treatment, self-inflicted deaths, and homicides. According to the authors, the results suggested that thresholds exist for most of the MQPL dimensions. They identify lower "unsafe" and "minimally safe" thresholds. The study concludes that scores of prisons below the lower threshold had a very strong relationship with each of our five serious forms of violence in prison. Similarly, according to the authors, prisons that did not manage to cross the "minimally safe" threshold also had strong relationships with incidents of violence in their prison but were at slightly lower risk of those incidents occurring. Their study found striking differences in the mean incident rates when comparing prisons below the lower threshold to those above the "minimally safe" threshold. The aim of the study was to develop an empirically and theoretically derived conceptual model of prison quality, showing where higher ("safer") and lower ("very unsafe") thresholds can be found. The initial modal analysis indicated that the distributions for majority of the dimensions contained more than one mode. This suggests that thresholds can exist at each end of the distribution for most of the MQPL dimensions. The study found that scores of prisons below the lower threshold had a very strong relationship with each of our five serious forms of violence in prison. Similarly, in prisons that had managed to cross the safe threshold, according to the authors, MQPL scores also had strong relationships with incidents of violence in their prisons, but these prisons were at considerably lower risk of those incidents occurring. The study presented mean incident rates for each of the two groups of prisons: (1) those below the lower threshold and (2) those above the safer threshold. The difference in violence rates between these two groups was striking. The difference between violent prisons and minimally safe prisons (according to the authors, in so far as we can use this kind of terminology – indicating low rather than no risk of violence) is, taking examples, scores of 3.05 for staff-prisoner relationships, 2.80 for humanity, and 3.00 for policing and security at the low end versus scores of 3.55 for staff-prisoner relationships, 3.35 for humanity, and 3.45 for policing and security at the 'minimally safe' end. These are substantial differences, reflecting the fact that to operate a safe prison, a combination of harmony, security and professionalism dimensions must be achieved (see Auty & Liebling, 2020; Auty & Liebling, 2024).

Women's Correctional Institution in Serbia: Security, Discipline, and Safety

The legal framework regulating the conduct of individuals serving prison sentences in Serbia is largely defined by the law and relevant by-laws. This includes relevant provisions from the Law on Execution of Criminal Sanctions[4] and three by-laws: the Rulebook on Disciplinary Proceedings against Convicted Persons,[5] the Rulebook on the Measures for Maintenance of Order and Security in Penitentiary Institutions,[6] and the Rulebook on Treatment, Treatment Program, Classification and Subsequent Classification of Prisoners.[7]

Maintaining order and security in penitentiary institutions is a highly significant, yet difficult and challenging task for prison staff. In addition, maintaining order and security involves the segment of disciplinary action, i.e., measures and procedures related to the conduct of convicted individuals during their sentence. Disciplinary measures aim to prevent violations of the regulatory system, enable the smooth functioning of the institution, and facilitate the successful implementation of therapeutic activities. Moreover, these measures are meaningful only if applied appropriately to the personality of the individual who has committed the offence, and in proportion to the nature of the offence and the overall situation, i.e., circumstances.

According to the provisions of the Law on Execution of Criminal Sanctions (Article 46, Paragraph 3), in the Republic of Serbia, women serve their prison sentences in separate prisons from men, which is fully in line with international standards. Women in Serbia serve their prison sentences in the Correctional Institution for Women in Požarevac (hereinafter referred to as the Correctional Facility for Women). This is the only facility in Serbia where adult and juvenile female offenders, convicted of crimes and misdemeanours, serve their sentences. The Correctional Facility for Women is a semi-open type of institution, with open, semi-open, and closed departments, as well as a special department for juveniles, which differ based on the level of security and the way women prisoners are treated (Articles 15 and 16 of the Law on Execution of Criminal Sanctions). In semi-open type institutions, staff in the security service represent the basic obstacle to escape (Article 14, Paragraph 3, Law on

[4] *Official Gazette RS*. No. 55/2014 and 35/2019.
[5] *Official Gazette RS*. No. 79/2014.
[6] *Official Gazette RS*. No. 55/14.
[7] *Official Gazette RS*. No. 66/2015.

Execution of Criminal Sanctions). However, for decades, the actual situation has disagreed with the legal provisions, as the Correctional Institution for Women in Požarevac has always been located behind high walls, meaning that women assigned to the semi-open and open departments also served their sentences within walled and other secured areas (Ćopić, 2024; Stevanović, Ćopić, & Vujičić, 2025). The reconstruction of the institution, which began in 2017, is expected to lead to full alignment of the factual situation with the legal framework (see more in: Ćopić, 2024), and progress in this direction is already visible today.[8]

Security, discipline and safety, according to Article 21 of the Law on Execution of Criminal Sanctions, in penitentiary institutions, are taken care of by the Security Service. Members of this service are authorized to implement measures aimed at maintenance of order and security in the penitentiary institution. The convicted person is obliged to act in accordance with the provisions of the Law on Execution of Criminal Sanctions and corresponding by laws, as well as according to the orders of officials, unless the execution of the order is illegal. To maintain order and security in the institution, only those measures for maintaining order and security that are established by law and only to the extent necessary can be applied to the convicted person, where coercive measures and special measures can be distinguished. In addition to these measures, for committed disciplinary offenses, it is possible to impose one of the disciplinary measures provided for by law, including solitary confinement (see more in: Ćopić, Stevanović, & Vujičić, 2024). When it comes to disciplinary measures, solitary confinement shall never be imposed on pregnant women and mothers with children (Protector of Citizens, 2021), which is in accordance with Bangkok rules.[9]

In terms of security and safety, the report of the Protector of Citizens from 2021 notes that searches of female prisoners are carried out exclusively by female officers, i.e., members of the security service (Protector of Citizens, 2021, p. 14). The report further states, based on interviews conducted during a visit by the National Mechanism for the Prevention of Torture, that detailed searches, which involve the removal of clothing and footwear, are not frequent, are gradual, i.e., at no point are the women prisoners fully

[8] The construction of the new Correctional Facility for Women is expected to be finished in 2026.

[9] Disciplinary segregation or instruments of restraint are a last resort and should be used only for the shortest possible time. Pregnant women, women with babies and nursing mothers in prison enjoy special protection against the use of restraints, solitary confinement or segregation

nude, as well as that during a detailed search, only female members of the security service are present in the room, ensuring the privacy and dignity of women prisoners. The Internal Rules of the Correctional Facility for Women specify situations in which a detailed search must be carried out (see more in: Protector of Citizens, 2021, p. 14). There are no alternative methods for invasive searches at the Correctional Facility for Women, although these searches are certainly not frequent.

In 2022, the National Preventive Mechanism conducted a follow-up visit to the Correctional Facility for Women in Požarevac (Protector of Citizens, 2022), during which it was determined that all recommendations made by the National Preventive Mechanism in the Report on the visit carried out in 2021 had been implemented. During the follow-up visit, it was observed that the number of treatment staff had increased, that internal procedures regulate the searches of children (both those residing in the institution and child visitors), that women prisoners subjected to the disciplinary measure of solitary confinement were allowed contact with family members, and that child visitors were allowed to leave the visiting area before the woman prisoner they visited, to reduce the adverse effects that the end of a visit may have on the children (Protector of Citizens, 2023).

Perception of Security as One of the Central Dimensions of Prison Life Quality in the Correctional Institution for Women in Požarevac

The dimension of *security* is one of the determining dimensions of the quality of prison life. It encompasses several aspects (subdimensions): Security as a dimension of the social climate in prison includes four aspects of prison life: 1) policing and security, which implies a sufficient number of staff to ensure professional supervision and control of the prison environment, and 2) the subjective sense of safety of the convicted persons, meaning that they feel safe and protected from injury, threats, and other dangers. The third subdimension is the adaptation of convicted persons to life in prison, which is viewed through the necessity or coercion of the convicted person to join informal groups within the prison. The final subdimension relates to the presence of drugs, abuse, and victimisation within the prison environment.

The respondents in the Correctional Institution for Women in Požarevac rated the security dimension with an average score of 3.02 (SD=0.68), with the lowest average score being 1.59 and the highest being 4.82. In other words, the average score for this dimension is at the threshold value, suggesting that the women prisoners involved in the research show a

relatively positive attitude towards this dimension of the quality of prison life. The research confirmed significant differences between the four subdimensions of security: the security of the women prisoners (M=3.08) and the adaptation of women prisoners (M=3.74) were rated significantly better than the policing and security (M=2.93) and drugs and exploitation (M=2.70). Basically, *security* in the Correctional Facility for Women in Požarevac is a dimension that is relatively positively rated, but there is considerable room for improvement, especially in the subdimensions that fall below the threshold values (See: *Table 1*).

Table 1. Rating of subdimensions within the dimension of security

Statements	***M***	***SD***	***Min***	***Max***	***N***
Policing and security	2.93	.68	1.67	5.00	91
Prisoner safety	3.08	.86	1.00	5.00	91
Prisoner adaptation	3.74	.92	1.00	5.00	91
Drugs and exploitation	2.70	.99	1.00	5.00	91
Security dimensions TOTAL SCORE	3.02	.66	1.59	4.82	91

Subdimensions of security

As we have already indicated, the dimension of *Security* refers to: the *Policing and security* – Professional supervision and control of the prison environment ("This prison has too few employees"); the *Prisoner safety* – The feeling of safety and protection from injury, threats, or danger ("I don't have problems with other prisoners here"); the *Prisoner Adaptation* – The need or pressure to join informal groups in the prison ("In this prison, you have to be part of a group to get by"); *Drugs and Exploitation* – The use of drugs, abuse, and victimisation in the prison environment ("Many people use drugs in this prison").

The subdimension of the *Policing and safety* refers to the feeling that there is professional supervision and control of the prison environment. It was examined through nine statements, to which all the participants responded on a scale from 1 (strongly agree) to 5 (strongly disagree) (*Table 2*).

Table 2. Rating of subdimension; Policing and Security

Policing and Security	*M*	*SD*	*Min*	*Max*	*N*
The staff of this prison pretend not to see when the women prisoners break the prison rules.	2.77	1.36	1.00	5.00	90
Supervision over women prisoners is weak in this prison.	3.30	1.28	1.00	5.00	90
This prison is managed by women prisoners rather than employees.	3.20	1.27	1.00	5.00	91
In this prison, very little is done to prevent the introduction of drugs.	3.30	1.30	1.00	5.00	91
The staff in this prison are reluctant to oppose the prisoners.	3.50	1.12	1.00	5.00	90
There are many problems between different groups of women prisoners here.	2.30	1.15	1.00	5.00	91
In this prison, the law of the strongest applies among the prisoners.	2.07	1.14	1.00	5.00	90
This prison has far too few staff.	2.38	1.09	1.00	5.00	91
The staff respond quickly to incidents and alarms in this prison.	3.58	1.16	1.00	5.00	90

As mentioned above, the rating of the women prisoner's experience related to the policing and safety is below the threshold value (M=2.93). At the same time, the women prisoners have a positive experience related to the statement that staff respond quickly to incidents and alarms in the prison (M=3.58), which is important for exercising the right to safety and security, as well as for the adherence to the established regulatory framework regarding the maintenance of safety and security in the prison. The following statements are above the threshold value: "Staff in this prison are reluctant to oppose the prisoners" (M=3.50); "Supervision over prisoners is weak in this prison" (M=3.30); and "This prison is managed by prisoners rather than employees" (M=3.20). An important finding was a relatively low score of the statement: "The staff of this prison pretend not to see when the prisoners break the prison rules" (M=2.77), which leads to the conclusion that respect of prison rules by employees is extremely important to women prisoners. When the score of this statement is compared to the score of the statement that is also below the threshold value, "This prison has far too few staff" (M=2.38), it is completely understandable that such an institution must have a sufficient number of staff to ensure professional supervision and control of the prison environment, as well as a sufficient number of people working in the treatment service (this point has been specifically emphasized by the Protector of Citizens through the National Mechanism for the Prevention of Torture in their reports).

This is supported by the relatively negative experience of the prisoners regarding the statement: "There are many problems between different groups of prisoners here" (M=2.30), and especially the statement: "In this prison, the law of the strongest applies among the prisoners" (M=2.07).
The subdimension of *prisoner safety* refers to the positive and respectful attitude of the staff towards the prisoners. It was examined through five statements. On a scale of 1 (strongly agree) to 5 (strongly disagree), all participants responded to four statements (N=91), while two participants did not respond to one statement, "Generally speaking, I fear for my physical safety" (See: *Table 3*). The overall rating of the participants regarding the subdimension of safety is slightly above the threshold value (M=3.08). In this regard, the prisoners particularly have a positive experience related to the statement: "I don't have any problems with other prisoners here" (M=3.58).

Table 3. Rating of Subdimension: Safety of Women Prisoners

Safety of Women Prisoners	***M***	***SD***	***Min***	***Max***	***N***
I fear for my physical safety.	3,45	1,25	1,00	5,00	89
I feel safe here and I am not afraid that I will be harmed, abused, or threatened, or that other prisoners will endanger me.	2,95	1,39	1,00	5,00	91
I can relax and be myself among the other prisoners in this prison.	3,03	1,32	1,00	5,00	91
I must be on my guard with everyone in this prison (this applies to both other prisoners and staff).	2,32	1,30	1,00	5,00	91
I don't have any problems with other prisoners here.	3,66	1,20	1,00	5,00	91

The subdimension of *prisoner adaptation* is the highest-rated subdimension of security. This finding indicates that many of the women prisoners do not feel the need or pressure to join informal groups in the prison, which can be assessed as a positive result. This subdimension was examined through three statements, all of which are above the threshold value (see: *Table 4*). Specifically, the participants had a positive experience with the statement that they do not have to buy and sell things in prison in order to get by (M=4.13).

Table 4. Rating of Subdimension: Prisoner Adaptation

Prisoner adaptation	***M***	***SD***	***Min***	***Max***	***N***
To get by in this prison, I must buy and sell things.	4,13	1,10	1,00	5,00	91
It's hard for me to avoid getting into debt in this prison.	3,79	1,36	1,00	5,00	89
In this prison, you must be part of a group to get by.	3,33	1,18	1,00	5,00	91

On the other hand, the use of drugs, abuse, and other forms of victimization in the prison environment are the lowest-rated – with a score of 2.70, thus below the threshold value. The obtained score suggests that the respondents show relatively negative experiences regarding the presence of drugs and abuse in the prison, indicating that this is a segment that requires special attention in the work of the staff. Women prisoners have a particularly negative experience regarding the statements: "Some convicts have the main say in the sections of this prison" (M=2.15) and "Drugs cause numerous problems between prisoners here" (M=2.57), which are significantly below the threshold values (See: *Table 5*).

Table 5. Rating of subdimension Drugs and exploitation

Drugs and exploitation	***M***	***SD***	***Min***	***Max***	***N***
Drugs cause numerous problems between prisoners here.	2,57	1,31	1,00	5,00	91
Many prisoners use drugs in this prison.	3,07	1,37	1,00	5,00	90
There are many threats/abuses in this prison (by staff or prisoners).	3,05	1,22	1,00	5,00	91
In this prison, weaker prisoners are abused and mistreated (by other prisoners or staff).	2,64	1,30	1,00	5,00	91
Some convicts have the main say in the sections of this prison.	2,15	1,20	1,00	5,00	91

The presented results should be considered through the lens that the respondents involved in this study were exclusively from the closed and semi-open sections, and that the majority of the respondents were serving prison sentences for criminal offenses under Article 246 of the Criminal Code – unlawful production and circulation of narcotics (30.8%). It is also worth noting that approximately one-fifth of the respondents committed

some form of homicide, with aggravated murder under Article 114 of the Criminal Code and murder under Article 113 of the Criminal Code being the next most common criminal offenses. Additionally, it should be kept in mind that the study was conducted during a period of intensive construction work, which, by early 2027, should ensure the full alignment of the factual and normative framework.

Conclusion

In modern society, there is an increasing awareness of the need to respect human rights, including the rights of convicted persons. It is evident that prisons have a significant impact on people's lives, and research has shown that the prison experience can have a profound and long-term effect on the physical and mental health, education, employment, and social connections of prisoners. Furthermore, research on life in prisons, such as the research conducted under the PrisonLIFE project, involves continually addressing numerous and complex challenges, including access to the prison population for security reasons, as well as many other ethical issues.

Maintaining order and creating a safe environment for both prisoners and staff is one of the primary responsibilities of prison administration. Security and order depend on the professionalism of the staff, particularly in the security service, but also on the harmony within the prison environment, that is, on interpersonal relationships, both among the prisoners and between the prisoners and staff. The dimension of *security* is one of the determining dimensions for the quality of prison life. It encompasses several aspects (subdimensions), and this paper presents the basic results on how the respondents in the Correctional Institution for Women in Požarevac, the only women's prison in Serbia, perceive this dimension and its subdimensions.

The respondents in the Correctional Facility for Women in Požarevac rated the dimension of security with an average score of 3.02 (SD = 0.68), with the lowest average score being 1.59 and the highest 4.82. In other words, the average rating for this dimension is at the threshold value, and it can be concluded that the women prisoners included in the study show a relatively positive attitude toward this dimension of prison life quality. However, the research confirmed significant differences between the four subdimensions of security: the security of the women prisoners (M = 3.08) and the adaptation of women prisoners (M = 3.74) were rated significantly better than the policing and security (M = 2.93) and drugs and exploitation (M = 2.70). The presented results are part of a larger study, as previously mentioned, which analyzed the quality of prison life for 91 women

prisoners in Serbia, representing 40% of the female prison population in 2022, with the aim of assessing their overall experience, analysing differences in the quality of life across various categories and dimensions of the MQPL (Measuring the Quality of Prison Life), and identifying specific aspects of the prison environment that require improvement. Significant variations were found in the assessments of the prison climate. The findings indicate a relatively low overall quality of prison life, with a substantial proportion of respondents reporting a negative overall experience of life in prison. Only a small percentage expressed a positive view of the quality of prison life. However, relatively positive experiences were reported in the categories of *Conditions and Contact with Family, Harmony,* and *Security*.

The presented results should be considered through the lens that the respondents involved in this study were exclusively from the closed and semi-open sections (and there is a limitation since the study did not include respondents from the open section). Additionally, majority of the respondents were serving prison sentences for criminal offenses under Article 246 of the Criminal Code[10] – unlawful production and circulation of narcotics (30.8%). It is also worth noting that approximately one-fifth of the respondents committed some form of homicide, with aggravated murder under Article 114 of the Criminal Code and murder under Article 113 of the Criminal Code being the next most common criminal offenses. It should also be borne in mind that the research was carried out during the period of intensive construction works, which, by early 2027, should fully ensure the alignment of the factual and legal framework. From a regulatory perspective, we believe that the most room for improvement exists in the area of classification of prisoners, including women prisoners, which determines their categorization and subsequent classification based on assessed risk levels, the type of the criminal offense, the length of sentence, health status, relationship to the criminal offense, form of guilt, prior convictions, and other criteria established by the ministerial regulations governing classification and subsequent classification of convicted persons. However, this act does not define the concept of security risk, nor does it specify how this risk is quantified, other than through the application of a "non-discriminatory" Risk Assessment Questionnaire, which, in our opinion, should be subject to revision (See more: Pavlović, Radenović, & Petković, 2016; Ilijić, Stevanović, & Vujičić, 2024;

[10] *Official Gazette RS*. No. 85/2005, 88/2005 – 107/2005 – 72/2009, 111/2009, 121/2012, 104/2013, 108/2014, 94/2016 i 35/2019.

Stevanović, Ilijić & Vujičić, 2024), especially in the part that refers to women as convicted persons.

To ensure this, as noted by Auty and Liebling, the effort to manage a secure prison must be accompanied by achieving a combination and integration of dimensions such as harmony, security, and professionalism (see: Auty & Liebling, 2020; Auty & Liebling, 2024), as well as recognizing the fact that the power dynamics between prison officers and women deprived of their liberty, as well as the responsibility to manage that power and authority appropriately in all situations, understanding the particular vulnerability faced by women prisoners, especially in relation to the application of disciplinary measures, searches, and other restrictions, as well as reactions to sexual and any other abuse in prison, require the establishment of special measures to prevent and combat violence against women prisoners, either by other prisoners, or by prison staff.

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Review Paper

Ex-prisoner Fitting into Working Environment: Imputs for Organizational Context

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Although ex-prisoners face lower chances of obtaining and maintaining employment compared to many diversity groups (such as individuals with disabilities or ethnic and gender minorities), the movement to promote their re-entry into the workforce has emerged in the past two decades. Moreover, ex-prisoners contend with multiple disadvantages stemming from their past lives and experiences during their criminal careers. Most research has concentrated on preparing ex-prisoners for the labor market, while studies exploring the readiness of the organizational context for their re-entry are lacking. This work aims to examine the organizational diversity culture and climate related to the reintegration of ex-prisoners into the workplace, drawing on a literary review. Recommendations for diversity-related policies and practices concerning ex-prisoners, as well as broader societal implications, are discussed. The re-entry of ex-prisoners

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into the workforce extends beyond personal or group responsibility; it requires the engagement of the entire society.

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Introduction

Corporations mostly sponsor women and minority associations and educational programs for minorities and provided corporate funding with a diversity focus. Some of the other community relations efforts included school-business partnerships, research funding related to women and minorities, internships with a diverse focus, mentor programs for minority students, and company leaders participating as members of boards of minority organizations (Wentling, & Palma-Rivas, 2007). What about ex-convicts? They are rarely recognized among diversity groups, even there are a lot of research data on their challenging position towards re-entering to the workplace (Shivy et al., 2007). A movement emerged in the late 1990s in the United States to promote prisoner workplace re-entry (Toney, 2007). Qualitative research methods were employed to analyze data from two focus groups: one consisting of male nonviolent felony offenders (n=6) and the other of female nonviolent felony offenders (n=9), all of whom were receiving services at day reporting centers that provide a nonresidential form of community corrections (Shivy et al., 2007). Participants shared their reentry experiences, leading to the identification of 11 key domains related to ex-offenders' needs, including education, training, and practical assistance; challenges in securing and maintaining employment; a limited employment skills and difficulties in transferring skills gained in prison to employment after release; limited support systems, such as personal networks and resources from the correctional system (Shivy et al., 2007; Bardry et al., 2018). The employment agency workers shared ex-prisoners' perception of challenges related to workplace re-entry (Bardry et al., 2018). The findings indicate that counseling professionals should pay attention to ex-prisoners' social networks, particularly the social dynamics within workplaces, as these networks can either provide support or pose challenges during their transition. Additionally, substance abuse, lack of stable accommodation, physical and mental health issues and pro-criminal social environments might affect negative attitudes of employers, difficulties with the processes of applying for jobs (Shivy et al., 2007; Bardry et al., 2018; Stojanović et al., 2021). The internal and external impacts of the stigma associated with incarceration should be considered (Shivy et al., 2007). Research data

shows that some strategies like finding job at previous employer where they were working at the time of arrest (Ramakers et al., 2016) or starting own business (Smith, 2021) might help in faster reintegration.

Too often, the mere presence of a diversity initiative (or the amount of money spent on an initiative) is used as a signal of its efficacy. Practitioners truly committed to the welfare of their workers, however, should be motivated to assess whether their initiatives are achieving their acquired goals, and to course-correct if not (Dover et al., 2020). The Covid-19 pandemic and the MeToo and Black Lives Matter social movements have led many leaders to reassess their relationships with their employees (Harvard Business Review, 2021). Organizations in sectors as diverse as governmental and nongovernmental sectors want their workforces to better represent the broader communities in which they operate. These organizations are making it a priority to treat all employees equitably, and to create the conditions to make everyone feel welcomed and included. Two-thirds of respondents to a recent survey of 1,115 North American organizational leaders conducted by Harvard Business Review Analytic Services say that diversity, equity, and inclusion is a high strategic priority for their organization (Harvard Business Review, 2021).

This research is aimed to explore organizational diversity context that might be of relevance to the ex-prisoner workplace re-entry. Workplace diversity culture and climate will be explored towards proper ex-prisoner reintegration in the working environment.

Diversity Culture: what the organizations need to do

Changing diversity culture means taking on the ingrained norms that exist in organizations. It is difficult to attract and retain people when they don't feel welcomed and included, or when they perceive opportunities to be unfairly weighted against them. For example, in organizational context, professional services firms have long had a "work comes first" ethos. That culture can lead to inequities (e.g. opportunity for women who take time off to have children) (Harvard Business Review, 2021). Related to the population of the ex-prisoners we can say that "employers interest comes first". Study on Malaysian ex-prisoner workplace re-entry highlights the importance of active government involvement in engaging employers with ex-offenders through incentives like tax reductions, as well as organizing prison job fairs to enhance their employment opportunities (Khasni et al., 2023). Even reducing costs in hiring people with criminal records is frequently recommended (Doleac, 2016), these interventions are external and far form a real systematic solution for this group of employees. The

need for formal guidelines and practices regarding the hiring of ex-offenders within organizations to foster a positive hiring culture is recognized (Khasni et al., 2023).

It seems to be that the greatest diversity effort is having to be made in leadership and management. Based at the research at the sample of diversity initiative experts it's found that senior management commitment was a leadership and management diversity initiative identified by all study participants (Wentling, & Palma-Rivas, 2007). All of them indicated that senior management plays a crucial role in establishing workforce diversity in their corporations (communicating the importance of diversity throughout the organization through policy statements, memos, letters, speeches, company newsletters and newspapers, and reports). The study participants indicated that the best way to maintain ongoing commitment for diversity initiatives was to link them effectively with the organization's business objectives. All the interviewed experts indicated that their corporations use consultants in some way to plan, develop, implement, and evaluate diversity initiatives. Van der Brink (2020) research showed how collective learning practices took place but were insufficiently kept in a collective memory. Beside building "new" memory on diversity policies and gender inequality, organizational memory to enable diversity policies and practices to be implemented. The inability to create a community of practice stopping the positive change (Van der Brink, 2020). As author noticed we are constantly "reinventing the wheel" (Van der Brink, 2020). More than half of the expert indicated using external consultants to conduct needs assessment, diagnosis, and cultural audits, and to help them in the planning and delivery of diversity training programs. Sometimes both external and internal consultants were used, depending on the program and needs (Wentling, & Palma-Rivas, 2007). Ex-prisoners often possess multiple diverse identities, and their reintegration experiences can vary significantly across different social groups, such as racial and ethnic minorities, women, mothers, individuals from rural areas, and those with differing sexual orientations (Goger et al., 2021; Kovacevic et al., 2024; Kovacevic, 2012). It is debatable whether employees with criminal records are primarily defined by their criminal history or by other socioeconomic disadvantages. In this context, it has been suggested that removing the question about criminal records from job applications could be beneficial (Doleac, 2016). Campaigns aimed at "banning the box", requiring that questions about criminal record are deferred to a later point when the person could address them in interview (Doleac, 2016; Heydon et al., 2018). Research results shows that the openness of some employers to engage with applicants creates opportunities for individuals with criminal

records to demonstrate their commitment to rehabilitation and challenge prevailing stereotypes about offenders. When there is no opportunity or willingness for such discretionary engagement, employers are likely to adopt a risk-averse approach to hiring. This can lead to the preemptive exclusion of potentially valuable employees, further marginalizing ex-offenders and increasing their risk of deeper social exclusion (Heydon et al., 2018).

Recommended organizational diversity practices can be categorized into (Leslie, 2019, p. 542).

Nondiscrimination practices

Merit-based decision making

Ensuring that decision making is based on qualifications and abilities, not demographics. Examples include use of tests or other objective tools in hiring, use of performance evaluations to determine pay and promotions, and name-blinding applications to conceal demographic information.

Diversity training

Educating employees about bias and disadvantages faced by targets and providing strategies for preventing bias from resulting in discrimination. Diversity training is often focused on preventing discrimination and, thus, is best categorized as a nondiscrimination practice. Training that educates managers on how to provide additional resources to targets is better categorized as a resource practice.

Resource practices

Preferential treatment

Giving an advantage to targets in decision making.

Targeted recruitment

Increasing access to and the attractiveness of jobs and promotion opportunities among targets (target group associations).

Diversity statements

Increasing the attractiveness of an organization to targets by including a statement (e.g., in job ads, on a website, etc.).

Targeted training

Providing targets with additional training (e.g., managerial skills) to increase their likelihood of being hired or promoted.

Diversity networking groups

Increasing targets' access to and support from one another. Examples include employee affinity groups (also referred to as employee resource

groups) and paying for targets to belong to professional associations designed for members of their group.

Diversity mentoring programs

Increasing targets' access to powerful others. Examples include formal mentoring and career sponsorship programs for targets.

Accountability practices

Diversity plans

Setting diversity goals (e.g., increasing representation, reducing career gaps, improving survey-based inclusion scores) and monitoring progress toward those goals. Examples include setting aspirational numbers (e.g., for target representation) an organization hopes to meet or establishing quotas that are strictly enforced.

Diversity performance evaluations

Evaluating managers' performance in terms of helping the organization meet diversity goals.

Diversity positions

Appointing a person or persons within the organization who is responsible for overseeing the organization's diversity efforts, either temporarily or permanently.

Grievance systems

Establishing a system through which individuals can report instances of discrimination and other events that inhibit progress toward diversity goals.

American diversity experts in 88% indicated that their companies had initiatives to recruit and promote women and minorities (Wentling, & Palma-Rivas, 2007). Considering ex-prisoners both the characteristics of the criminal offense and those of the ex-offender can shape hiring managers' perceptions of job applicants with criminal records, potentially either hindering or facilitating their chances of securing employment (Young & Powell, 2015). Additionally, it suggests that factors related to the hiring manager, the job, the organization, and government incentives can moderate the relationship between managers' perceptions of the competence of ex-prisoner applicants and their subsequent hiring decisions (Young & Powell, 2015).

General diversity management models currently receiving attention in contemporary literature are:

The *Interactional Model of Cultural Diversity* (IMCD) (Cox, 1993) suggests that a variety of phenomena related to differences in the group

identities of workers combine to create potent effects on their career experiences and outcomes. Actual job performance may be related to group identities in some organizations. These individual outcomes, in turn, have an impact on a series of first-order organizational-effectiveness measures such as work quality, productivity, absenteeism, and turnover. Diversity in both the formal and informal structures of organizations will affect factors such as creativity, problem solving, and intra-organizational communication (Goyal, & Shrivastava, 2013).

Adapted Interactional Model. Bell (2011) adapted and broader version of Cox's Interactional Model of Diversity Climate (Cox, 1993) in which additional areas have been included in the diversity climate, individual outcomes, and organizational effectiveness. Hubbard (2012) has also adapted some elements from Cox's Diversity Climate Model and lists components of work climate that determine an organization's capacity to welcome and use workforce diversity as a resource for better performance. Key Components of Diversity Climate: *Individual-Level Measures Definition* (amount of identity-group prejudice, predisposition to dislike or have a negative attitude toward someone, amount of stereotyping, amount of ethnocentrism, etc); *Work Group-Level Measures Definition* (level of intergroup conflict, group identity strength, quality of intergroup communication, cultural differences and similarities, etc.); *Organization-Level Measures Definition* (identity profile of workforce, mode of acculturation; content of organization culture, power distribution among groups, openness of informal networks, adaptability to change, etc.) (Hubbard, 2012).

Attraction-Selection-Attrition (ASA) model - In 1987 (Schneider et al., 1998), Schneider proposed a person-oriented model of organizational behavior based on the proposition that it is the collective characteristics of people who define an organization. The ASA cycle suggests that people are differentially attracted to organizations on the basis of an organization's character and the organizational structure, strategy, and culture. Selection increases homogeneity and contribute to restricting the type of applicants who enter an organization to those with the competencies, interests, and personality consistent with the goals of the organization (Schneider et al., 1998).

Diversity Cimate: need to feel valued at the workplace

Like other diverse groups in the workplace, ex-prisoners need to feel valued and accepted. Discrimination in the workplace can effectively turn any sentence into a lifelong consequence ("any sentence as life sentence", Flake, 2015), severely impacting their reintegration and overall well-being. The less that we need involved with diversity initiatives is that they reproduce inequalities. The presence of organizational diversity initiatives may lead to a presumption of fairness for underrepresented groups, but at the other side making discrimination harder to identify and litigate (Dover et al., 2020). Unintended consequences might be happening through the communication of fairness, inclusion (see included, but feel excluded), and questionable competence. They can additionally imply that underrepresented groups need help to succeed and are thus less competent than their advantaged counterparts (Dover et al., 2020). The authors suggest that organization must find way for balancing homogeneity and diversity (Hanges et al., 2006). An individual's criminal history should not be disqualifying unless there is a direct connection between a past offense and the job in question, such that hiring the individual would pose an unreasonable risk to property or the safety of specific individuals or the public (as it is regulated within NY Correct Law, as cited in Flake, 2015). Even when there is a job-related aspect to a criminal history, its significance is contingent upon whether it creates an unreasonable risk. For instance, a theft conviction might be relevant for a hotel front desk clerk position; however, if the hotel has security measures like cameras monitoring the front desk and a policy requiring two clerks to always be present, these safeguards will reduce the risk of theft. In such cases, the relevance of the past offense diminishes. Employers should consider eight factors when evaluating the relevance of an individual's criminal background: the state's public policy aimed at encouraging the licensure and employment of ex-offenders; the specific duties and responsibilities associated with the position or license; the potential impact of the individual's criminal record on their ability to fulfill those duties and responsibilities; the amount of time that has elapsed since the crime was committed; the age of the individual at the time of the offense; the severity of the offense; evidence of rehabilitation or good conduct since the offense; the employer's legitimate interest in safeguarding both property and the safety and welfare of specific individuals or the general public (NY Correct Law, as cited in Flake, 2015).

The organizations must be responsive to environment. Employees diversity, fairness, harassment are issues that every healthy organization

must take in consideration. Policies, practices, and procedures must be consistent, and the connection with environment is found to be very important (empowering/updating employees' competences is very important). Healthy organization have climate for diversity, climate for fairness and climate for continual learning (Hanges et al., 2006). Researchers and practitioners should note the potential unintended signaling consequences of diversity initiatives, and build-in accountability and social psychological knowledge when designing policies aimed at creating inclusive, diverse, and fair workplaces (Dover et al., 2020). People with criminal history have less chance to find and keep job then people with disability or chronic illness (Graffam, & Hardcastle, 2007). The author developed a typology of diversity initiative unintended consequences (Leslie, 2019). The four unintended consequences are defined and differentiated by crossing two dimensions: the direction of the effect (i.e., desirable versus undesirable) and the outcome affected (i.e., intended versus unintended) (Leslie, 2019). As an illustration may serve a rigorous evaluation of a diversity training program that focused on tolerance and did not increase participants' personal comfort with members of other groups (Paluck, 2006). What does the expert say about diversity initiatives at the workplace? Baized at in-depth, open-ended interviews barriers that have inhibited the employment, development, retention, and promotion of diverse groups in the workplace have identified. It's revealed that the primary reasons for managing diversity are to improve productivity and remain competitive, to form better work relationships among employees, to enhance social responsibility, and to address legal concerns (Wentling, & Palma-Rivas, 2007). Benevolent discrimination as a subtle and structural form of discrimination that is difficult to see for those performing it, because it frames their action as positive, in solidarity with the (inferior) other who is helped, and within a hierarchical order that is taken for granted (Romani et al., 2019). Main three dimensions of benevolent discrimination are: (1) a well-intended effort to address discrimination within (2) a social relationship that constructs the others as inferior and in need of help, which is granted with (3) the expectation that they will accommodate into the existing hierarchical order (Romani et al., 2019). The concept of benevolent discrimination is proved on an in-depth qualitative case study of a Swedish organisation that is believed to be exemplary in its engagement in diversity management initiatives. Authors argue that human resources professionals frame their actions as acts of benevolence that they cannot see how they take part in organizational discrimination, offering colonial narrative (Dover et al., 2020).

Ex-prisoners inclusion in working environment is recommended to be based at principles of personalism, solidarity, subsidiarity, openness, social justice, and social partnership (Fel, & Wódka, 2016). For example, principle of personalism builds on the dignity of the person. The person must not be treated instrumentally in any social, economic, or political frameworks. The application of the personalism principle requires solutions that will contribute to human growth, not humiliation or degradation. Treating each other with dignity may be more effective for personal development than initiatives focused solely on preventing negative outcomes (such as prejudice and discrimination), similar to the Human Dignity Curriculum implemented in schools (Kovačević Lepojević, 2024). In respect of rights, the dignity of the person requires equal treatment for everyone. The principle of solidarity is founded on the multiple interconnections among all members of society and the various responsibilities that arise from these relationships. Social groups, with their diverse interactions, engage with one another in meaningful ways. Solidarity is expressed through an awareness of belonging to communities that are linked not only emotionally but also through shared interests. This sense of connection creates an obligation to care for one another, and excluding any individual or group contradicts the essence of solidarity. The principle of solidarity is intrinsically connected to the principle of subsidiarity, which aims to promote the common good and human development through effective collaboration among public bodies, NGOs, and individual members of society. The principle of openness regarding the inclusion of young ex-prisoners, particularly in terms of collaboration between public and social partners, should be understood in a broader and more complex context. In its narrower sense, openness is particularly relevant during the administrative processes within public bodies that function as employment agencies. It is recommended to enhance employers' awareness of the benefits they can gain from hiring young ex-prisoners. These advantages can arise from emerging trends in corporate management, such as corporate social responsibility. One effective way to implement the principle of openness in social life is through a large-scale educational campaign aimed at informing the public about current social issues, particularly those closely tied to the economy. Applying this principle to the relevant area should involve a social outreach campaign that presents the issue objectively. A successful campaign would aim to change the stereotypical perceptions of young ex-prisoners among the general public and foster a sense of social responsibility toward addressing this issue. The goal of social justice is to give each person what they deserve as humans, based on their inalienable dignity. Public-social partnerships should be central to

developing mechanisms for including young ex-prisoners. These partnerships are supported by legal regulations that facilitate collaboration between public bodies and NGOs. The variety and diversity of social aid and integration institutions, along with NGOs that assist ex-prisoners in the labor market, play a crucial role in this process (Fel, & Wódka, 2016). A notable example from Serbia is the recent case of five ex-prisoners being employed by the NGO "Posle kiše" (After Rain) at the Kragujevac Medical Center. This initiative was a recognition of their contributions during the COVID-19 crisis (Danas, 2024, September 13).

Fostering positive contact instead of benevolent discrimination

In the social psychological literature, one of the most well-established strategies for reducing prejudice and fostering positive intergroup relations involves no training and no discussion of prejudice (Dover et al., 2020). Organizations might encourage activities in which diverse employees can work together on projects and in an equal-status (same power) context where cooperativity, as well as friendships might develop.

Harvard Business Review Analytic Services survey uncovered many practices for increasing diversity, equity and inclusion (Harvard Business Review, 2021):

Provide a hotline for reporting Diversity, Equality & Inclusion (DEI) incidents Leaders have to provide mechanisms for employees to report DEI incidents without fear of reprisal (63% versus 27%).

Add a warmline for advice and coaching Warmlines provide early intervention and support for non-crisis situations. The warmline helps the company spot problems that might need to be addressed on a larger scale.

Make full use of employee resource groups (ERGs) or networks.

ERGs have evolved into powerful groups that provide a voice for employees and help leaders understand the challenges people face. Most successful ERGs have executive sponsors who participate in meetings, help with resources, and advocate on employees' behalf.

Change up recruiting.

DEI leaders go beyond the usual sources as LinkedIn, which is not especially diverse.

Employ diverse hiring panels.

Provide just-in-time nudges about bias.

In addition to training about unconscious bias, it should be send a reminder to hiring managers before interviews about biases that can creep in, and the company provides leaders with a bias primer as they are calibration ranking their talent and doing promotions.

Encourage advancement and provide clear development pathways.
Offer DEI-inclusive mentorship and sponsorship programs.
Leaders are for example encouraged to "mentor someone who doesn't look like you,". Mentorship helps with things like getting to know hiring managers, knowing how to jump to another position, having someone who can coach them, and connecting with people who might be on their career path.
Create a DEI steering committee.
Share practices with DEI peers.

Diversity networks as good diversity management practice serve to support the needs of employees with different social identities, such as women, ethnic minorities, LGBTs, disabled and young people (Dennissen et al., 2019).

Recommendation for future of diversity initiatives

The authors suggested that lack of evidence-based practices may be partially responsible for lackluster progress in preventing employment discrimination (Dover et al., 2020). Researchers and academics must continue designing and testing diversity interventions and sharing their results with practitioners and policymakers. Practitioners and policymakers themselves, however, can also collect data about how their initiatives affect hiring outcomes, prejudice, perceptions of inclusion, and concerns about discrimination. Author noticed that organizations try to achieve a lot with their diversity initiatives and that is possible that by attempting to accomplish so many goals, a diversity initiative will become unfocused, and less effective at achieving the most important goals. Identifying measurable goals—greater feelings of inclusion, increased diversity of the applicant pool, greater knowledge about how to detect and report discrimination, decreased experiences with discrimination will lead to more effective interventions (Dover et al., 2020). Measuring diversity performance seems to be very important by the diversity expert perspective (Wentling, & Palma-Rivas, 2007; Trajković et al., in print). More than half (63 percent) corporations had initiatives dealing with management accountability related to diversity performance. Managers were held accountable for developing diversity action plans to meet their business unit and corporate goals and objectives. Diversity performance at the business unit level as well as at the individual level was then linked to compensation by emphasizing both qualitative and quantitative aspects of achievement and by rewarding behavior that promotes diversity (Wentling, & Palma-Rivas, 2007). Along with the maxima "what gets measured gets managed" Harvard Business Review (2021) stated that who want to improve

Diversity Equity Inclusion (DEI) use data and analytics in the following ways: Establish a baseline and set goals for the future; Measure progress on a regular basis (Forty-seven percent of respondents to the Harvard Business Review Analytic Services survey measure progress toward their diversity and equity goals at least twice a year); Communicate progress widely; Go beyond high-level metrics to identify areas for intervention; and Hold the organization accountable Harvard Business Review (2021) (Wentling, & Palma-Rivas, 2007).Interview with James Timpson, the Chief Executive of Timpson retailers published within a research paper by Pandeli et al., (2020) "Risky Business? The Value of Employing Offenders and Ex-Offenders: An Interview With James Timpson, Chief Executive of Timpson", is great example of organizational culture where ex-prisoners feel welcomed and valued. James's approach focuses on a holistic perspective in recruitment, viewing each potential employee as a complete individual whose strengths, weaknesses, and future potential lead to long-term benefits for personal, society and organizational growth and profitability are substantial.

Conclusion

Attempts to redress disadvantage by paying attention to single areas of disadvantage have limited impact and there is a need for an integrated, holistic support system towards breaking a circle of reoffending. The path to successful workplace reentry of ex-prisoners requires both individual and society wide efforts. Parallel processes - taking personal responsibility of for their actions, confronting with their past, gaining new skills and behaviors which starts along with rehabilitation process at the one side, and more systematic context level efforts within the whole society at the other side need to be done towards providing workplace reentry of ex-prisoners from various stakeholders.

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Review Paper

Rehabilitation Potential of Prison Visits for Vulnerable Categories of Prisoners[1,2]

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Prison visits are crucial for the rehabilitation of prisoners, especially for vulnerable categories such as prisoners of a younger age and prisoners of an elderly age. Younger prisoners, as the dominant prison population, more frequently have addiction issues, while elderly prisoners face health problems and social isolation. Visits to these groups can significantly improve their mental health and provide the necessary social support. This paper seeks to contribute to a better understanding of the specific needs of the above groups of prisoners, but also to draw attention to the importance of adapting the visitation system to the specific needs of different categories of prisoners, in order to support their rehabilitation and preserve the family structure, which can have lasting positive effects on their behavior in prison and on the social reintegration process. The results presented in the paper were obtained as part of the project *Assessment and possibilities for improving the quality of prison life of prisoners in the*

[1] Part of the results presented in this paper are a segment of more comprehensive research results that will be published in the scientific monograph *Socijalni i porodični kontakti osuđenika i kvalitet zatvorskog života [Social and family contacts of prisoners and the quality of prison life]* (Ilijić, Pavićević & Vujičić, 2025), by the Institute for Criminological and Sociological Research.

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Republic of Serbia: Criminological-penological, psychological, sociological, legal and security aspects (PrisonLIFE). Some of the most significant results indicate that 87.2% of respondents receive visits, and that maintaining regular contacts with family and friends has a positive impact on the quality of prison life (Ilijić et al., 2025). Age as a predictor is negatively correlated with receiving visits, which means that as the age category of the respondent increases, the number of visits decreases. The travel distance between prison and home is a significant predictor of visits – the respondents whose home is less than an hour's drive away from prison receive visits more often. Also, respondents who have partners receive visits more frequently. The above results suggest that age plays a key role in social interactions and opportunities for social networking, where younger generations clearly have a better chance of achieving social connection and support. Elderly respondents, according to the analyses, receive fewer visits, which may indicate a decrease in social ties with the outside world as the age category changes. The distance between prison and home also plays a vital role, with a shorter travel distance correlating with a greater number of visits, which suggests that logistical barriers may significantly affect the frequency of visits. Analysis and monitoring of the experience of receiving or not receiving visits provide an opportunity to reflect on the existing visitation policies, but also to develop visitation strategies that would improve the prison treatment practice by introducing customized visitation support (therapeutic, psychological, social) based on the recognition of the specific needs of individual groups of prisoners.

Keywords: *Prisoners, at-risk categories of prisoners, Visits, Improving the practice of receiving visits*

Introductory considerations

Visits to convicted persons in prison, among which the most common and significant ones are the visits from family and friends are, ostensibly, part of the prison routine that is regulated by law and the protocol of the correctional facility. However, we should keep in mind that visits are a complex event that can differ in terms of dynamics, quality, and importance for the convicted persons. Also, the research into receiving prison visits and their effects, as well as understanding the reasons and circumstances under which certain prisoners do not receive visits, provides valuable insight that is important for the development of prison policies, and creates room for improvement of prison practices.

Numerous studies confirm the importance of visits (DeClair & Dixon, 2017; Tewksbury & DeMichele, 2005; Vladu et al., 2021) and indicate that they accomplish several important functions. First, they contribute to the preservation of the family structure (Visher, 2013), positively affect the well-being, prosperity and development of prisoners and their family members, and facilitate the process of social reintegration after release (Burns et al., 2024; Duwe & Clark, 2013; Hairston, 1991; Wolff & Draine, 2004). Moreover, intensive and high-quality visits can reduce violence in prisons (Berghuis et al., 2023; Mitchell et al., 2016) and break the intergenerational cycle of incarceration, thereby facilitating the process of reintegration into community life (Duwe & Clark, 2013), and reduce recidivism rates. In other words, "effective visitation policies help prison staff and inmates feel safer, reduce crime, save money, and mitigate the harm that incarceration does to individuals, families, and communities" (Boudin, Stutz, & Littman, 2012, p. 152 cited by Ilijić et al., 2025, p. 28).

In professional literature, the prevailing conclusion is that visits have a positive effect, in terms of mitigating the harmful effects of imprisonment (Siennick et al., 2013), but their complexity implies a certain degree of ambivalence in which the negative effect of visits is recognized (Casey-Acevedo et al., 2004; Cochran et al., 2017). The absence of visits to prisoners can certainly deepen the feeling of isolation, due specifically to the interruption of the continuity of social and family relations with the outside world. However, the importance and benefits of visits depend on a number of internal and external factors, including the quality of the relationship, the dynamics of mutual interaction, as well as the conditions in which the visits take place.

The research on visits, as complex events, often includes a wide variety of predictors, such as individual, demographic and social characteristics of prisoners (Cochran et al., 2017; Young & Hay, 2020), the nature of the crime (Cochran et al., 2017), the length of the sentence (Wildeman et al., 2018), the travel distance between the prison and the place of residence (Andersen et al., 2022; Comfort, 2008; Cochran et al., 2020), the visitation experience and the quality of the relationship between the prisoner and the visitor before incarceration (Hickert et al., 2019), marital status, and the conditions in which the visits take place (Andersen et al., 2022).

Prison visits are an important aspect of the rehabilitation of convicted persons, especially when viewed in the context of vulnerable categories of prisoners. These categories include people who face specific challenges, such as addiction to psychoactive substances, mental disorders, old age and/or lack of social connections. For these categories of prisoners, visits can have multiple rehabilitation potential – they can provide the necessary

emotional support during incarceration and enable easier adaptation to society after release.

Having in mind the positive effects of visits on the behavior of convicted persons in prison and the preservation of family ties, in this paper we focused our attention on the study of variations in receiving visits depending on the prisoners' age. Prisoners of a younger age and prisoners of an elderly age are addressed as separate categories for several reasons. First, younger respondents are often placed in at-risk categories due to high rates of alcohol or drug addictions. On the other hand, elderly prisoners are faced with specific health problems and social isolation, which is why they are a separate group that requires additional attention. Visits to these categories of prisoners can play a key role in improving their mental health and providing social support.

This paper seeks to contribute to a better understanding of the specific needs of these groups of prisoners, but also to draw attention to the importance of adapting the visitation system to the specific needs of different categories of prisoners, in order to support their rehabilitation and preserve the family structure, which can have lasting positive effects on their behavior in prison and on the social reintegration process.

Analysis and monitoring of the experience of receiving or not receiving visits provide an opportunity to reflect on the existing visitation policies, but also to develop visitation strategies that would improve the prison treatment practice by introducing customized visitation support (therapeutic, psychological, social) based on the recognition of the specific needs of individual groups of prisoners.

In the research conducted as part of the PrisonLIFE project, valuable data was obtained on the social and family contacts of prisoners, and the effects that visits have on the quality of prison life of convicted persons in the Republic of Serbia, and some of the results will be presented in this paper.

Review of previous research

Numerous studies emphasize the importance and positive impact of maintaining social and family ties on the behavior of convicted persons in prison and after release – in the social reintegration process (Cobbina, Huebner, & Berg, 2012; Cochran et al., 2017; Jiang & Winfree, 2006). Prisoners who maintain social ties with family members have a greater chance of preserving conventional social roles (primarily parental and partner) and cope better with stress and social isolation in prison, as well as during social reintegration (Cochran & Mears, 2013; Cochran et al., 2017; Duwe & Clark, 2013).

In addition to the empirical evidence that not only indicates the positive effects of maintaining family and social ties on the behavior of prisoners, but also suggests that visitation is a key strategy through which prison systems can improve maintaining order in prisons (Christian, Mellow, & Thomas, 2006), the research also points to the simultaneous existence of disproportionality in visits (Cochran et al., 2017). The nature of this disproportionality stems from the prison system itself, reflected in unequal visitation opportunities for all prisoners (type of prison, internal classification, prison policies, etc.), from the individual characteristics of the prisoners and the quality of their social and family ties before (and after) incarceration, as well as from objective difficulties (of a physical nature – the travel distance between prison and home, economic and financial difficulties of the family, high costs, etc.).

Some authors emphasize that the disproportionality in visits can also represent a potential form of unequal punishment, the consequences of which are more pronounced among certain at-risk or minority groups (Bales & Mears, 2008; Cochran et al., 2015; Pavićević & Ilijić, 2022) of prisoners. The existing literature on prison visitation offers mixed results. Previous research indicates that the rate of prisoners who do not receive visits varies from 39% (Duwe & Clark, 2013) to 74% (Cochran et al., 2015). Among the most common reasons for the relatively low visitation rates in U.S. prisons are restrictive visitation policies (Arditti, 2003; Farrell, 2004), inadequate conditions for prison visits, high travel and accommodation costs (Christian, 2005), as well as the large geographical distances between prison and home, or places where potential visitors live (Casey-Acevedo & Bakken, 2002; Cochran et al., 2015; McNeeley, & Duwe, 2019).

In the research carried out as part of the project *Assessment and possibilities for improving the quality of prison life of prisoners in the Republic of Serbia: Criminological-penological, psychological, sociological, legal and security aspects – PrisonLIFE*, the social and family contacts of prisoners and the quality of prison life were analyzed in relation to certain socio-demographic and criminological-penological characteristics of prisoners (gender, age, education, type of crime, distance between prison and place of residence, distribution, etc.).

The total sample consists of 634 respondents from five correctional facilities[5,6]. The average age of the respondents is 39.7 years (min. = 20 years; max. = 74 years). When considered by age category, 19.1% are respondents who are 20 to 30 years old, while 39.1% are respondents from 31 to 40 years of age. If these two age categories are viewed as one category – the younger population, we arrive at the data that the sample consists of 58.2% of respondents aged 20 to 40[7].

In terms of maintaining social and family contacts, 96.2% of the respondents keep some form of contact with their family, through letters or phone calls, and 87.2% of the respondents receive visits. Maintaining regular contacts with family and friends has a positive effect on the quality of prison life (Ilijić et al., 2025). Correlation analyses showed that age as a predictor is negatively correlated with receiving visits ($r = -0.99$, $p < .05$). This correlation coefficient indicates an extremely strong negative correlation between age and the frequency of receiving visits, which means that the number of visits decreases with the increasing age of the respondents. On the other hand, younger respondents, in accordance with this result, receive visits significantly more frequently. Also, the distance between prison and home statistically significantly correlates with the frequency of visits ($r_{pb} = .177$, $p < .01$). Respondents in prisons that are less than an hour's drive away from their homes receive visits more often. Marital status also has a statistically significant correlation with visits ($r_{pb} = .107$, $p < .01$), where respondents who have a partner (either married or cohabiting) receive visits more frequently (Ilijić et al., 2025).

This analysis clearly suggests that age plays a vital role in social interactions and opportunities for social networking, where younger generations evidently have a better chance of social connection and support. Elderly respondents, according to the analyses, receive fewer visits, which may indicate a decrease in social ties with the outside world as age changes. The travel distance between prison and home also plays a

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[5] Sremska Mitrovica Correctional Facility, Požarevac – Zabela Correctional Facility, Niš Correctional Facility; Belgrade Correctional Facility and Correctional Facility for Women in Požarevac.

[6] The study utilized the Measuring the Quality of Prison Life Survey – MQPL (Liebling et al., 2012), specifically an adapted version of the questionnaire for measuring the quality of prison life in Serbian (Milićević, Ilijić & Vujičić, 2024; Međedović, Drndarević, & Milićević, 2024).

[7] For more detailed information on the criminological-penological characteristics of the sample of the examined population, see: Stevanović, I., Ilijić, Lj., & Vujičić, N. (2024). Previous prison experience and evaluation of the quality of prison life. *NBP. Nauka, bezbednost, policija*, *29*(1), pp. 1–19. https://doi.org/10.5937/nabepo29-47558

key role, where shorter distances are associated with a higher number of visits, suggesting that logistical barriers may significantly affect the frequency of visitation. In addition, marital status is shown to be a factor that contributes to a higher number of visits, where persons who have partners receive visits more often, which may indicate the importance of stable partner and interpersonal relationships in the context of social and family contacts of prisoners. Undoubtedly, these findings point to the need to consider social and logistical factors when creating policies that would support more frequent and better quality visits to prisoners.

Furthermore, the fact that the age structure of prison population in our research is dominated by younger prisoners is in accordance with statistical data on the age structure of prisoners in other countries. According to the available data, 18.8% of the total number of prisoners in the United States are 20 to 30 years old, and 31.5% are 31 to 40 years old (Statista Research Department, 2024). The average age of inmates in European prisons in 2022 was 38 years. In countries with more than a million inhabitants, the average age of the prison population ranges between 31 and 44 years. The lowest average age of prisoners is recorded in Bulgaria (31 years) and Denmark (34), while the highest average age of prisoners is in Georgia (44), Italy (42) and Portugal (41) (Aebi et al., 2023).

Younger prisoners as an at-risk category and visits from family and friends

According to the previous research, younger prisoners showed a high prevalence of mental health issues, especially in the initial period of their incarceration (Monahan et al., 2011). Some researchers report that the prevalence of mental health disorders among younger prisoners reaches up to 70% (Collins et al., 2010; Teplin et al., 2002; Gonçalves et al., 2016).

The World Health Organization states that mental health problems are as much as seven times more common in the prison population than in the general population of Western societies (WHO, 2024). This increase in mental disorders coincides with the growth of the prison population, and an additional aggravating factor is substance abuse in prisons (Gómez-Figueroa, & Camino-Proaño, 2022). Research results indicate that approximately half (57%) of prisoners in Europe used drugs at least one year before going to prison (van de Baan et al., 2022), and upon their incarceration, 30% of men and 51% of women meet the diagnostic criteria for drug use disorders (Fazel, Yoon, & Hayes, 2017).

In the research conducted by Fovet et al. (2022) in prisons in France similar results are reported – that drug use and the frequency of drug use disorders

are significantly more common among prisoners than the general population. Half of the prison population uses drugs, compared to 14% of users in the general population, and 29% of the prison population have a diagnosed drug use disorder, compared to 5% in the general population (Fovet et al., 2022).

The use of psychoactive substances is often associated with reasons for punishment (Favril, 2023) and recidivism (Lokdam et al., 2022).

In the research within the PrisonLIFE project, we found that 48.6% of respondents used drugs before going to prison, while 10.5% of respondents stated that they had problems with both drugs and alcohol before incarceration. According to the results, 12.6% of respondents stated that they needed help with drug addiction recovery upon arrival in prison, 1.2% that they needed help with alcohol addiction recovery, while 1.3% of respondents stated that they needed help with both drug and alcohol addiction recovery upon arrival in prison. 3.5% of respondents were included in a specialized drug addiction recovery program in prison (Milićević et al., 2024).

The above findings, which show that younger respondents dominate in terms of age structure, as well as the data on the number of respondents who used drugs before incarceration, point to the justification for directing attention to the at-risk categories of prisoners, but also to the importance of institutional, social and family support during the execution of the prison sentence.

Despite the high prevalence of mental health issues among younger prisoners, little is known about the longitudinal course and factors impacting the symptoms of their mental health during incarceration, particularly the impact of the prison environment (Gonçalves et al., 2016).

The effects of incarceration and living in prison are a blow to the well-being of prisoners of all age categories, and can have a negative effect on their behavior in prison, especially in younger prisoners. The impact of visits from family and friends, which is assumed to help improve the mental health of the prison population, especially younger prisoners, as well as their adaptation to prison life, has not been the subject of much research interest so far, and the findings related to this matter are inconsistent (Gonçalves et al., 2020).

Young adult age carries specific characteristics associated with identity, social, educational and other determinants that are more or less successfully realized, while their need to be more socially connected, and the fact that they find social isolation more difficult to endure, is documented in research into prison life (Cochran et al., 2018; Lindsey et al., 2017; Kreager et al., 2016).

In view of these specific characteristics of young adulthood, it is possible that adjustment to prison life, receiving prison visits, and the connection between visits and mental health happen differently in young adults compared to adults (Gonçalves et al., 2020, p. 235).

For the purpose of bridging the research gap, given that visits to the younger inmate population are underrepresented in prison visitation research, a study was conducted in Portugal on the longitudinal course of visitations to young adults during their incarceration. The study focused on their individual characteristics associated with receiving prison visits, as well as the reciprocal relationship between visitation and mental health (Gonçalves et al., 2020). Some of the key findings of this research have been singled out for the purpose of further analysis. Namely, the results showed that visits from family and friends are more intensive for younger inmates with a lower level of education, compared to younger inmates with a higher educational level, and also, that the visits are more intensive if the prisoners are Portuguese citizens, if they have had a history of treatment for mental illnesses, and a less complex criminal history (Gonçalves et al., 2020, p. 245). In conclusion, the authors suggested that prisoners of a younger age receive more intensive support from their family members, friends and the community, so it is possible that families of people with mental issues visit their loved ones more often due to concerns about increased stress levels and difficulties in adapting to the prison environment.

The final results of this study indicate that a higher level of mental health symptoms upon incarceration resulted in a higher number of visits in the first three months of the prison sentence, while visits after the third month in prison had no effect on subsequent mental health symptoms, which is in contrast with earlier findings in the criminological literature (Casey-Acevedo & Bakken, 2002; Liebling, 1999; Pleggenkuhle et al., 2018; Turanovic & Tasca, 2019 according to Gonçalves et al., 2020, p. 246).

Mental vulnerability of the younger prison population is often perceived as a motivation for more frequent visits, so the greater number of visits can be explained by the greater concern of family members and friends about the consequences of stress, separation, isolation and adaptation to prison life, especially in the initial phase of incarceration. The need of the relatives to provide social support is the key reason for the greater number of visits that younger prisoners receive.

The results of the research on prison visits from family and friends in relation to the quality of prison life in the Republic of Serbia, as previously stated, showed that younger prisoners receive more visits than elderly prisoners. No statistically significant correlations were found between the

variables age and maintaining regular contacts with family, the importance of getting support from family, and the importance of getting support from friends (Ilijić et al., 2025). The results of our research imply a similar conclusion that we came across in the Portuguese research, that the number of visits is related to the motivation of the visitors, primarily family members, who try to reduce the effects of prison strains by providing emotional and practical support through visits (Gonçalves et al., 2020; Hickert et al., 2019). Also, if prosocially oriented persons are willing to visit frequently, they are likely to be more willing (or able) to provide crucial emotional or instrumental support in overcoming dramatic changes in circumstances and uncertainty after release (Hickert et al., 2019).

By presenting the results of the Portuguese research documenting the visits from family and friends for members of the Portuguese nation, we sought to highlight the importance of the component of cultural specificity, which also manifests itself in our research on contact with family and friends as a very high number of visits, which is not the case in prison practices of developed Western countries.

While the results of research within the PrisonLIFE project indicate that, based on a sample from five correctional facilities in Serbia, the percentage of prisoners who receive visits is more than 85%, the research in Denmark showed that in the period of 12 months before release, almost 60% of prisoners in Denmark received at least one visit, while the data from Florida show that number to be 40%. Prisoners who receive visits in Denmark record a total of 25 visits per sentence, while in Florida, the number of visits is less than half that number, i.e. 10 (Andersen et al., 2022). A study of visitation patterns by type of visitor found that differences in visitation stem from "significant others", relatives and friends, rather than the immediate family, although these patterns were not consistent across all parameters (Andersen et al., 2022).

When considering and researching prison practices (particularly visits to prisoners), it is essential to take into account the general cultural and social practices and specificities that shape the behavior, norms and values in the social as well as the prison system.

In this sense, the importance of family and the type of social capital that is generated and shared can be significant for understanding the behavior of families in more traditional societies where bonding social capital prevails, compared to North-Western European societies where cultural and family practices are characterized by greater autonomy, egalitarianism and more distant social ties (Ingelhart & Baker, 2000; Schwartz, 2006). In addition to being in line with the social support paradigm (Cullen, 1994), theories of attachment (Bowlby, 1988; Inagaki & Orehek, 2017) which Portuguese

researchers (Gonçalves et al., 2020, p. 246) suggest as an explanation for a greater number of visits from family members to the younger prison population, the research of visits should also take into account local cultural and social specificities.

Elderly prisoners as an at-risk category and visits from family and friends

Elderly[8] prisoners are another specific and vulnerable group within the prison system. With the aging of prisoners, a number of physical, psychological and social changes occur which require adaptation of prison conditions and access to rehabilitation. Some authors state that elderly prisoners are the fastest growing part of the prison population (Williams et al., 2012), and their number has doubled over the last two decades (Turner et al., 2018). Complex health and social care-related needs that arise from aging, frailty and poor physical and mental health are significant characteristics of this population, which makes them different from younger prisoners (Hayes et al., 2012 as cited in Milićević & Ilijić, 2022). Also, factors from the prison environment accelerate the aging process. Mental health issues, social and emotional impacts, as well as the loss of contact with the outside world, are just some of the frequently cited factors of more intense aging in a prison environment. In other words, the physical and mental health of prisoners is comparable to the physical and mental health of a more advanced age group of people outside prison, i.e., prisoners are functionally older in relation to their chronological age, which can be attributed to their previous lifestyle, lack of medical care and prison experience in general (Trotter & Baidawi, 2015; Veković et al., 2021, as cited in Milićević & Ilijić, 2022, p. 505).

According to official data on the prison population in Europe, approximately 16.5% of prisoners are aged 50 or over, while 3% are aged 65 or over. In countries with more than one million inhabitants, the highest percentages of prisoners over the age of 50 are found in Italy (28%), Spain (25%), Portugal (24%), while on the other hand, the highest percentages of prisoners over the age of 65 are found in North Macedonia (8.3%), Republika Srpska (Bosnia and Herzegovina) (6.6%), and Bulgaria (5.6%) (Aebi et al., 2023).

In our research, prisoners over the age of 50 are the least represented age category, and make up 14.8% of the sample of the observed population. Also,

[8] In the literature, there is no single definition of elderly prisoners, but 50 and over 55 years of age are often mentioned as age thresholds. (Baidawi & Totter, 2016 as cited in Milićević & Ilijić, 2022; Williams et al., 2012).

elderly prisoners receive fewer visits than younger prisoners (Ilijić et al., 2025).

Visits play a key role in the lives of elderly prisoners, not only in the emotional, but also in the physical and psychological sense. The involvement of family, friends and other significant persons in the rehabilitation process of elderly prisoners can have a major impact on their well-being and prosperity, as well as physical and mental health.

Prisoners of an elderly age often suffer from loneliness, which may further worsen their existing physical, mental and emotional difficulties. Visits from family and friends play a key role in reducing the feelings of loneliness and social isolation. For elderly prisoners, who often struggle with physical limitations and may not have the same opportunities for social interactions as younger prisoners, regular visits from family members and significant others outside prison can provide vital emotional support.

The loss of family contacts and social ties is particularly challenging for elderly prisoners who have spent a long period of time in prison. Restrictive or limited contact with family or friends leads to reduced satisfaction with the quality of life and well-being of prisoners (De Motte, 2015; Ilijić et al., 2024). Findings from some research indicate that for elderly prisoners, apart from the fear of death in prison, one of the biggest worries is precisely the fear of losing contact with the closest family members and the feeling of loneliness (HMIPS, 2017). In other words, limited or severed social contacts are often cited as one of the key unmet needs of elderly prisoners (Hayes et al., 2013 as cited in Milićević & Ilijić, 2022, p. 507).

Maintaining contact with important persons outside the prison environment is one of the starting points in preserving the dignity of elderly prisoners. Therefore, it must be pointed out that contact with the family can restore their personal sense of dignity and have a positive impact on their rehabilitation and reintegration into society after leaving prison (Testoni et al., 2020; Tucker et al., 2021 as cited in Milićević & Ilijić, 2022, p. 513).

In the literature, we can find information that the most important factors that lead to not receiving visits are obstacles of a social, practical (economic) and material nature (Rubenstien et al., 2019). The probability of receiving visits varies depending on the quality and intensity of social and family relationships and the prisoner's experiences before incarceration. The prisoners are more likely to receive visits if they had harmonious family, marital, partner and friendship relationships and ties before going to prison, that is, it is less likely that the prisoners will receive visits if they had weak relationships with family members, if there was divorce or separation from their partner, or impaired relationships with their parents and children (Ilijić et al., 2025). Also, the greater the distance

between prison and home, the lower the frequency and prevalence of visits (Clark & Duwe, 2017; Hickert, et al., 2017). The type of crime is a factor that can lead to a lower number of visits to the prisoner by family members, especially if it is a crime of violence and/or a crime against a family member. Among other factors, the age of family members, socio-economic status and the availability of material and financial resources for travel from the place of residence are often cited (Ilijić et al., 2025; Milićević & Ilijić, 2022; Veković et al., 2021).

Visits and respect for order and discipline in prison

A large number of researchers have focused on studying the effects of visitation on the prisoners' behavior in prison, and/or the effects of visitation on respect for order and discipline (Jiang et al., 2005; Jiang & Winfree, 2006; Cochran, 2012; Hensley et al., 2002), depending on the prisoners' gender (Jiang & Winfree, 2006) and relation with the visitors, where the effects of visits from spouses (Hensley et al., 2002) and children (Jiang et al., 2005; Rubenstein et al., 2021) were studied most frequently.

Research results are often inconsistent (Bales & Mears, 2008), which prevents the simple conclusion that contact with family necessarily promotes respect for order and discipline in prison.

In a study conducted by Hensley et al. (2002), it was concluded that conjugal visits do not have a significant effect on the violent or undisciplined behavior of inmates in prison.

On the other hand, the results of the research conducted by Cochran (2012) support the thesis that visitation reduces the probability of undisciplined behavior of prisoners. Namely, although the results suggest that the majority of prisoners did not violate the rules of order and discipline in prison, the research is important because it indicates that the effects of visits vary depending on the time and consistency with which they occur. This finding is significantly different from previous research because it suggests that prisoners who are visited more often are less prone to rule-breaking behaviors. In contrast, prisoners who did not receive visits at all, as well as those who received visits at the beginning, but not later during their incarceration, were more likely to engage in more regular patterns of undisciplined behavior in prison (Cochran, 2012).

The research conducted by Jiang, Fisher-Giorlando, and Mo (2005) provides quantitative data on the impact of social support on prison misconduct, with child visits as one indicator of social support. Three categories of disorderly conduct were considered on a monthly basis: the total number of disorderly conduct violations, prison violence violations,

and drug and property violations. The results of the research in terms of social support coming from outside the prison point to the fact that prisoners who were married were 14% less likely to violate the rules regarding order and discipline in the prison. On the other hand, prisoners who received visits from children were significantly more likely to violate rules related to drugs and property in prison (Jiang et al., 2005). This research provided evidence that prison visitation, particularly by children, can increase rule breaking in the prison environment. This "counterintuitive result may be linked to the fact that more intensive visits, especially from children, provide more opportunities for the introduction of contraband into prisons" (De Claire & Dixon, 2015, p. 13). Similar findings are reported by other researchers. Berghuis et al. (2023) state that inmates who received visits were 63% more likely to be reported for possession or use of prohibited items compared to inmates who did not receive visits. Siennick et al. (2013) also found that receiving visits significantly increased the likelihood of disciplinary infractions related to possession of prohibited items. These results are understandable, considering that the ways in which prohibited items can get into prison are limited (Berghuis et al., 2023), and are moft often connected to visits from significant persons.

Potential for improving visits to at-risk categories of prisoners

Researchers who have looked into the effects of visits on the behavior of prisoners suggest that prison systems should make additional efforts to increase the number of prisoners who receive visits, while ensuring that those efforts do not jeopardize the safety and security of prison staff, prisoners, and visitors. Bales and Mears (2008) gave specific guidelines for improving the intensity of visits, which state that prisons as institutions can increase the number of visits by: sending prisoners to serve their sentences in prisons that are close to the family's place of residence and near the prisoner's home; encouraging organizations from the community to visit prisoners (especially those who do not receive visits from family and friends), simplifying / reducing the bureaucratic procedures associated with visits, and ensuring adequate physical and spatial conditions in which the visits will take place.

Schuhmann et al. (2018) investigated how prisoners value "one-on-one" volunteer visits in prisons in the Netherlands. Based on the semi-structured interviews with prisoners in six prisons, the authors concluded that the prisoners perceive the visits from volunteers as very significant and useful. Prisoners point out that the visits from volunteers give them a rare

opportunity to talk to someone in confidence, and that the visits give them hope and encourage a more positive outlook on the future.

Also, the experiences of good organization and encouragement of regular family visits in the U.S. prison practice should be taken into account (Boudin et al., 2014). This refers to the programs of private family gatherings, with the aim to preserve, improve and strengthen the family ties that have been damaged due to incarceration of a family member, where visits within the framework of such programs are only available to prisoners who behave well and participate in prison programs focusing on reintegration into society, education and work. The programs are clearly explained, defined, and include penalties for rule violations, prevention of communicable diseases, and forms used in program administration (Boudin et al., 2014, p. 177). The authors point out that the relative rarity of such special support programs for family visits in the USA is a fact that speaks for itself. They imply larger financial and organizational investments, which, however, pay off, as can be seen from the experience of the federal states and institutions where these programs have been implemented.

Incentive programs in support of visits from family members aim to motivate prisoners to receive (more) visits, and one of the ways is to reward them with additional enhanced visits (special family visiting days) (Hutton, 2017). However, it should be noted that programs that include IEP (Incentives and Earned Privileges) or RSP (Regime Status Points) have been criticized for the negative impact on the behavior of prisoners, the perception of fairness and the quality of the relationship between staff and prisoners (Hutton, 2017; McCarthy & Adams, 2017). The need for prisoners to harmonize their behavior with the existing rules of reward and advancement within the system implies that prisoners who fail to impose themselves in this sense remain invisible to the administration despite following the rules. Entire groups of prisoners who are unable to self-regulate and align with performance management in accordance with reward requirements, primarily those with mental health issues, are denied support through the program (Hutton, 2017, p. 93). Additionally, promoted positions encourage the ability to better achieve expected behaviors and nurture artificial interpersonal relationships that represent a path to privilege (Hutton, 2017; Pavićević & Ilijić, 2020).

Instead of a conclusion

The potential for a negative impact of reduced visitation on prison and reentry outcomes, as well as increasing social inequality, points to the need for policies that expand the prisoners' access to social networks during their

incarceration. Prison institutions should focus on identifying and removing the obstacles that reduce opportunities for visits, especially those that contribute to the creation of unequal visitation conditions. Such efforts have the potential to improve prison order and discipline, as well as security, and to reduce inequalities that may occur in prisons (Cochran et al., 2015).

Prisoners with mental health and addiction problems come to prison with a greater degree of vulnerability, and have increased needs for health services upon entering prison. As especially important visitation characteristics and patterns, when it comes to the young prison population, we point out vulnerability, increased stress level due to social isolation, and higher prevalence of mental disorders.

On the other hand, a higher number of visits from family and friends is noticeable, motivated by the tendency of the visitors to provide support and reduce the anxiety caused by incarceration. The results of the PrisonLIFE research showed that although younger prisoners receive visits more often than elderly prisoners, no statistically significant correlations were found between the variables age and maintaining regular contact with family, the importance of support from family, and the importance of support from friends.

The idea of encouraging the interest of young prisoners in visits from family and friends indicates the need for professional support in the revitalization of family relationships based on trust and mutual support. Through improving the conditions and content of visits, the aim is to harmonize the needs and expectations of both the person who receives the visit, and the visitors, which would contribute to the strengthening of interpersonal, family and social ties. Professional support would include psychological and psychiatric assistance (in case of mental health issues) as well as the intervention of social workers, who would take into account the visitation experience and the quality of the relationship between visitors and prisoners.

Improving visits for elderly prisoners is not only a matter of meeting their emotional and social needs, but also an important means of improving their physical health, mental state and chances of successful reentry into society. Visits can play a key role in reducing stress, increasing social ties and support, and providing practical assistance, all of which can contribute to a better quality of life for elderly prisoners and a reduction in recidivism. It is recommended that facilities and conditions related to prison visits reflect the specific needs and requirements of elderly prisoners and their visitors. It is also necessary for the prison administration and professional staff to recognize the at-risk categories of prisoners and direct additional attention to prisoners whose family relationship is damaged.

Taking into account the specific needs of at-risk categories of prisoners when designing visitation policies and programs can contribute to a more humane and efficient prison system.

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Review Paper

Should Prisons be Pretty? Influence of Prison Layout and other Architectural Characteristics on Life in Prisons[1,2]

Ana Paraušić Marinković[3]

Architecture and spatial design of any building is proved to have a major impact on human behaviour and experience. So is the case with prison design, which can affect different aspects of prison life, such as prisoners` wellbeing, prisoners and staff relations, prison social climate, prisoners` adjustment etc. The goal of the paper is to outline the prevailing theoretical thoughts and empirical findings regarding the impact prison architecture and design choices have on persons residing in correctional facilities, prisoners and staff alike. First, the historical development of different prison layouts and its impact on life in prisons is presented. Following is the identification and description of various interior and exterior factors that play a role in living and working conditions in prisons. The position of the architect and other relevant actors in planning and developing prison design is discussed in the conclusion.

Keywords: *Architecture, Prison design, Prison layout, Life in prison*

Introduction

Prison architecture and building design is one of the important issues in prison research and policy and has been the interest of scientists and experts for more than a century. The intersection between penology and

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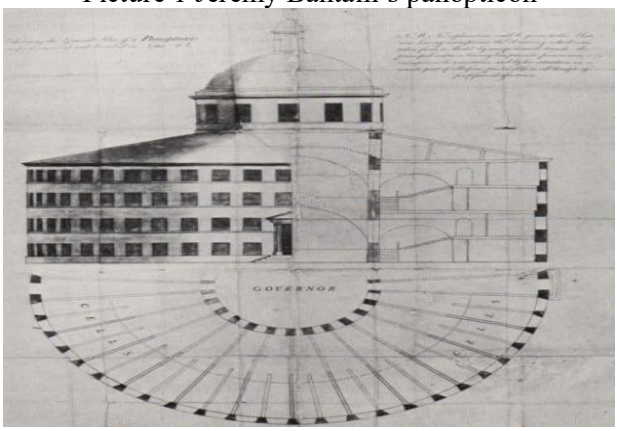
architecture raises many interesting social, moral and ethical questions, and the role of architect in the prison design is contested in the sense that he imagines functional, comfortable and eye-pleasing objects for persons who are in conflict with societal norms and values. A prison is understood as a place in a process of becoming through people's experiences, because of the circulation of stories and representations that together construct a picture of what place a particular prison is (Fransson et al., 2018, p. 24). Prisoners, staff, architects, planners and constructors should all have a saying in the process of prison design. The outlook of correctional facilities in society, its interior and exterior, are reflections on dominant penal philosophy and treatment of prisoners in a society. Prison architecture refers to buildings, interiors and other physical installations, as well as the outdoor of these buildings, yards, green surfaces, pathways etc. Some researchers indicate that prison is a socio-material construct drawing attention to how architecture is experienced, how it communicates with the people inside, makes people relate and talk, and in this way affects the prisoners (Fransson, 2018, p. 178). Architecture, prison artefacts and people melt together and create forces, producing energies and atmospheres in the prison (Frichot & Loo, 2013). Looking at prison architecture in this way, as open and dynamic, we can notice how staff and prisoners use the prison space, how prisoners indicate their will to belong, and use their time, identifying with the place (Fransson, 2018, p. 178). The design of any building can influence people`s experience and behaviour, as well as interactions among users of the space, as documented in environmental psychology research (see Gifford, 2007; Sommer, 1974). Following this line of thought, it can be said that design of prison exterior and interior can affect different aspects of prison life, such as prisoners` wellbeing (Engstrom & van Ginneken, 2022), prisoners and staff relations (Beijersbergen, 2014), prison social climate, prisoners` adjustment (Atlas, 1989; Grant & Memmott, 2008; Morris & Worral, 2010; Schaeffer et al., 1988; Wener & Olsen, 1980), etc. The goal of the paper is to outline the prevailing theoretical thoughts and empirical findings regarding the impact prison architecture and design choices have on persons residing in correctional facilities, prisoners and staff alike. First, the historical development of different prison layouts and its impact on life in prisons is presented. Following is the identification and description of various interior and exterior factors that play a role in living and working conditions in prisons. The position of the architect and other relevant actors in planning and developing prison design is discussed in the conclusion.

Prison layout and experience in prison

The typology of prisons is constantly changing throughout history. The first prisons of the modern era, in which prison sentences were served, are known as the systems of common prison (Kron et al., 2011). There was no classification of prisoners regarding gender, age, state of health and nature of crime committed. The outlook of the correctional facility was in service of preventing escape. Torture, beatings, unsanitary conditions and abuse were commonalities in this type of prisons; the overpopulation, health problems, even death were prevalent. During the 18th century a significant shift occurred regarding the penal philosophy and treatment of prisoners, which was also reflected in the way prisons were designed. Among the pioneers of this process was Jeremy Bentham, English philosopher who emphasised prisoners` surveillance, control and discipline (Bentham, 1995). Bentham envisioned prison buildings as circular structures with a domed roof and cells arranged in tires on the circumference of the circle. This type of design is called panopticon, and it was so influential that it remains in prison systems around the world till present-day (Picture 1). Prison staff is in the centre of the building, and from that position they were able to watch prisoners' behaviour and interactions without their knowledge of the surveillance ("seeing without being seen") (Beijersbergen, 2014, p. 64). The basic principle of the prison typology was to monitor the maximum number of prisoners with the minimum number of guards.

Picture 1 Jeremy Bantam's panopticon



Source: The works of Jeremy Bentham vol. IV, 172-3

Bentham's Panopticon has inspired considerable theory as well as physical solutions for prison architecture with centralised planning (Spens, 1994). One of the most notable examples was the Pennsylvanian system introduced in the first half of the 19th century, which included several prisons constructed in radial layout (Franke, 1995; Johnston, 2000). The facilities consisted of cell buildings that converge on a centre, which permitted surveillance and control of prisoners` activities from the central inspection centre. Prisoners were isolated in solitary confinements, disabling contact and communication, because it was believed that this would lead to self-reflection and remorse (Beijersbergen, 2014, p. 64). Separate cell was built for each convict to avoid the negative aspects of previous joint imprisonment and the negative mutual influence of the convicts, such as physical violence and collusion between prisoners, security problems, and unhealthy conditions (Spens, 1994). Isolation of prisoners had a severe negative impact on their physical and mental health, instead of expected remorse for crime committed. Regardless, the Pennsylvanian system had major influence on later thought and practice of prison design, bearing in mind that every modern prison is internally cell-like organised.

Initiatives for improving conditions in American prisons resulted in introducing the Auburn system, which allowed prisoners to work in groups during the day but kept in solitary confinement during the night. The Auburn system and corresponding architecture have been described as "machine-like" where prisoners are kept in tiny cells under total control (Fowler, 2015). As in the Pennsylvanian system, prisoners were prohibited from any communication or contact with each other, including non-verbal communication. However, results regarding the prisoners` improvement, turned out to be as ineffective as in the previous system. The Auburn philosophy and corresponding architecture were largely determined by builders who had the main responsibility of containing all the inmates in an orderly way, not by architects who could have created a more humane solution within the necessary constraints (Johnston, 2000, p. 76).

In Europe, development of penal systems from the mid-19th to the mid-20th century, reflects the cultural, economic, political and social transformations. There was a "constant pressure to find ways to define more enlightened, humane, but adequate punishment for committed crime" (Popović, 2022, p. 25). Hence, the dominant penal philosophy produced prisons that ought to be secure, clean and in line with the goal of rehabilitation, which resulted in, among the rest, similar prison architecture (O`Brien, 1995). In the second half of the 19th century, progressive English and Irish systems were introduced. The core idea of these systems was the

progression of convicts to better prison treatment with the possibility of parole (Kron et al., 2011, p. 67). In the English variant of the progressive prison convicts lived in cells, but unlike previous systems, they could have some benefits based on good behaviour like open cell doors, better food, books to read and even occupational training. In the next phase prisoners were serving the sentence together, which meant that the convicts were placed in common rooms, where the beds were separated only by partitions. In this phase, convicts worked together in production plants or in their own rooms, and their progression or upgrade to next category depended on commitment and behaviour.

Irish, also known as the handrail system, brought major changes in how prisons were built, since the priority was to categorise prisoners in different groups based on specific criteria. Soon, this system progressed in correctional facilities organised as pavilions. Classification of prisoners that required a pavilion in prisons was costly and modern architectural solutions moved forward to combine pavilion and radial design of correctional facilities. Prison building had several blocks with different categories of convicts who were surveyed from one centre. Costly extras like windows and spaces for dining, exercise, and counselling are limited and the goal is to spend as little as possible per cell (Fowler, 2015). This strategy required less officers and enabled isolation of the block if a riot, fire or other difficulty arose. Surveillance and maintenance costs could further be decreased with modern CCTV technology (Kron et al., 2011, p. 69-70).

In modern day there are various types of prison architecture which reflects the changing paradigm on purpose of sentence from punishment to prisoners` rehabilitation and reintegration (Johnston, 2000). The requirements of today's prisons are that they should cover the prisoner's material, physical, physiological and social needs. More attention is placed on the relationship and interaction between staff and inmates and the idea of surveillance has switched from a Panopticon-like idea of absolute visibility to a focus on awareness of happenings and direct supervision, which has led to changes in the design of the facilities (Spens, 1994).

In the second half of the 20th century, in some countries, high-rise prisons were built which consisted of multiple small stacked pavilions that form a multistorey building. Each pavilion has dozens of cells and a communal living room. This type of so-called "human" prison is designed to help prisoners feel "at home", where they could learn social skills and acceptable behaviour through group activities (Beijersbergen, 2014).

In the late 20th century, solutions that were also used in residential buildings began to be proposed, such as diagonally placed windows that offer the possibility of looking into the distance and offer privacy. Actions are being

taken for more humane detentions and the construction of prison space. Some new requirements were also defined: the design should be flexible to allow simple changes to the building, which could make prisons more in line with the ideas of penal philosophies. Many old prison buildings were upgraded at the beginning of 21st century, implementing the participation of prisoners in the design of some parts of correctional facilities.[4]

Scandinavia is known to have one of the most progressive penal systems that is reflected in the architecture of prisons. In these countries there could be found the so-called "open" prisons, and although with maximum security, prisoners reside in rooms or cottages that have large windows with no bars, wood furniture, painted walls, sometimes a TV, radio or a small refrigerator (Fowler, 2015). In open type prisons, convicts serve sentences with minimal surveillance, and could engage in jobs outside the correctional facility, which enhances their chances for re-integration and decreases the possibility to reoffend. The buildings are in ways that enable prisoners to move easily between their rooms, school, workplace and recreational activities in the best possible way (Brottveit, 2018, p. 208). However, some researchers criticised open prisons stating that prisoners experience "pains of freedom" instead of "pains of punishment", which can cause distress of "liberty under constraint" (Shammas, 2014). These types of correctional facilities also maintained some dehumanising practices, such as a relatively extensive use of pre-trial custody and isolation (Dullum & Ugelvik, 2012).

Based on existing research, we could not draw conclusive evidence on the relationship between different types of prison layout and experience and life in prison, or which type of prison layout has best outcomes for prisoners' wellbeing. Some argue that radial prison layout separating officers from incarcerated persons with bars or bulletproof glass have been found to create a sense of depersonalization, disengagement (Wortley, 1996), and increase the risk of prison suicides (Liebling, 2002). Prisoners incarcerated in panopticon-like prisons rate more negatively relations with staff than those residing in campus, radial, or high-rise layouts. Furthermore, the same study found that incarcerated individuals within campus-style designs had more direct lines of sight with staff and, compared to other designs, reported higher rates of positive relationships

[4] Such example is proposal od and Italian architect Giovanni Michelucci known as the Gardens of Reunion (*Giardino degli incontri*) in the Prison Complex of Sollicciano completed in 2007. This place in prison is designed as meeting places for the inmates and their families (Tracada, 2011; Giofrè, 2018).

with staff (Beijersbergen et al., 2016). Another study also suggested that campus prison layouts positively impact on inmates` behaviour, access to nature and prisoners-staff relations (St. John et al., 2019). Based on prison layout many choices regarding other prison architecture characteristics are dependent, which impact different aspects of life in prison, for prisoners and staff alike.

Prison architecture characteristics important for life in prison

Prison layout is not the only factor regarding the architecture that could have an impact on different aspects of life in prison, for prisoners and people working in correctional facilities. Small details, like different objects and things, which in ordinary life outside prison seem insignificant and taken for granted, become important inside the prison in order to construct a meaningful existence. Beijersbergen (2014) addresses five characteristics of prison design that are important for actions, experiences and relations in prisons. Those characteristics are facility size, unit size, how old is the prison building, sight lines and use of double bunking. Engstrom and van Ginneken (2022) further broadened the list of design features that could influence the experience and life in prison, organised in two categories. First one relates to the personal living space of inmates, including lightning, materials, noise, colour and other factors usually related to a prison cell. The second, named general prison space, relates to other spaces in the prison except the cell, as well as the outlook of the correctional facility, yard and exterior of the prison in general. The discussion of these and other relevant factors in this article is presented in relation to two categories: prison building interior and prison exterior.

Prison building interior

Natural or artificial light is one of the most important features of prison design and could impact different aspects of life in prison. Both absence of natural light and poor lighting on the one hand and inadequate darkness for sleep, could have various negative consequences on wellbeing and behaviour (Wener, 2012). Exposure to sunlight during the day, and smart lighting design inside are recorded to foster benefits for physical and mental health, as well as feeling “like home” atmosphere (Jewkes, 2010; Jewkes & Moran, 2014; Spens, 1994; St. John, 2020; Wener, 2012).
Level of noise affects different aspects of human life in any environment, let alone prisons which are known to be noisy. Level of noise that is disrupting everyday activities of persons in prisons (inmates and staff

alike) is recorded to have many negative consequences, such as negative relations between staff and prisoners (Beijersbergen et al., 2016), stress and illness (Moore, 1981; Stansfeld & Matheson, 2003).

One of the basic human needs is related to the *comfortable temperature* in living space. It is recorded that dissatisfaction with unfavourable living conditions that result from inability to control temperature could relate to higher rates of misconduct and violence in prisons (Atlas, 1984; St. John, 2020). Being able to control the temperature in the space where prisoners spend almost entire day, could restore sense of autonomy, comfort and satisfaction with prison interior (Frontczak & Wargocki, 2011; Glass & Singer, 1972; Jewkes, 2018).

Fresh and clean air is one of basic living requirements since bad ventilation could cause discomfort or some medical issues, such as fatigue, headaches and breathing difficulties (Karthaus et al., 2017). The quality of air in prison depends on the size of the space, design, materials used and mechanical system. The composition and origin of building materials, or in some cases the secondhand smoke could also impact the air quality in prison environment (Evans, 2003; Semple et al., 2017). There is higher risk of respiratory problems and transmission of infectious diseases in spaces with poor ventilation and limited air flow, coupled with cells cramped with inmates (Ryan et al., 2020). Beside physical health, ability to control this element of life in prison, could positively impact prisoners` autonomy, self-worth and general satisfaction with building interior (Frontczak & Wargocki, 2011).

Quality of living space is significantly influenced by *materials interior parts are made of*. The use of hard materials (concrete, brick, metal) is common in prison environment since their main characteristic is resistance to human and natural impact (Wener, 2012). Considering their corrosivity, less durability and higher cost, carpet, wood and cork are rarely present in prisons. However, research indicates several positive outcomes when soft and diverse materials are used in prison environment such as reduction of noise (Wener, 2012), breaking monotony and boredom (Hancock & Jewkes, 2011; Spens, 1994), and increased comfort (Jewkes, 2018). Furniture manufactured from soft materials beside comfort could support cleanliness in prison living conditions, which could impact the sense of identity, dignity and self-respect (Sloan, 2012).

Aesthetic aspect of prison design is regarded as an important factor in the quality of prison living conditions. Attractiveness of the space serves several purposes, mainly to ease the time serving in prison and to communicate the message of value and respect to prisoners (St. John, 2020). Colours and texture, for example, presence or lack of them, are

noted to have an impact on prisoners` wellbeing (Hancock & Jewkes, 2011). Research also indicates that introduction of more curved shapes rather than traditional sharp and angular ones could promote a domestic atmosphere and positive experience of living in prison (Papanek, 1995).
Possibility of *viewing something other than prison building* or other inmates everyday has a significant impact on incarcerated persons mental and physical health (Karthaus et al., 2017). Research indicates that a decent view has various positive consequences such as reducing boredom, fatigue, and irritability and increasing experienced comfort and perceived safety (Clearwater & Coss, 1991). It is common practice in prisons to block windows with bars, paint or windowpanes, or to place windows too high in the wall (Jewkes, 2010; Moore, 1981), therefore obstructing the prisoners view outside the correctional facility.
Existence or prevalence of *double bunking* in prisons is generally believed to have a negative impact on different aspects of life in prison. Spending time in units with double bunking is reported to have several negative consequences on prisoners' wellbeing, such as negative mood, perceived privacy, higher levels of experienced crowding, more behavioural and health issues (Cox et al., 1984; Grant & Memmott, 2008; Schaeffer et al., 1988; Wener & Olsen, 1980). In a study conducted in several Dutch prisons, results indicate that double bunking has been associated with more distant and less frequent officer-prisoner interactions (Beijersbergen, 2014).
Privacy of living space in prison is a direct outcome of decisions in prison design. Privacy of inmates has several aspects, namely, auditory, spatial and visual which are crucial for a more human prison environment (Moore, 1981). In this sense, a cell is the space where an inmate spends the most of his imprisoned days, hence the design and outlook of the cell can greatly impact the sense of privacy. Use of specific materials, type and furniture arrangement, selection of colours, design of the cell doors, presence or absence of divider to a toilet, are factors contributing to prisoner`s privacy (Engstrom & van Ginneken, 2022).
Considering the strong empirical evidence supporting the positive impact on prisoners, the *design of visitation space* should also be taken into consideration when discussing the issue. Some research results indicate that the visitation rooms that are too small, without adequate heath, cooling, place to sit and are uncomfortable in general, send a message of neglect and disregard toward this important part of prisoners' life (Comfort, 2003). Some suggest that comfortable furniture, bright colours, secured privacy, child friendly design of visitation rooms could contribute to increasing frequency of visits, as well as better experience for both prisoners and visitors (Karthaus et al., 2017; Siegel & Napolitano, 2021).

Prison exterior and experience and behaviour in prison

Regarding the correctional *facility and unit size*, we could say that there is consensus among researchers and practitioners in the field that smaller prisons, with fewer prisoners and smaller units are more favourable than large scale prisons with many people incarcerated (Farrington & Nuttall, 1980; Fairweather, 2000). Study on quality of life in Norwegian prisons demonstrated that decentralised and less hierarchical structure of the prison, with several levels and fewer employees, together with social aspects, creates a flexible and dynamic organisation (Johnsen et al., 2011, p. 523). Research shows that staff-prisoner relationships are more positive in small rather than medium or large scale prisons (Johnsen et al., 2011; Beijersbergen, 2014). Moreover, large buildings and units are associated with cold and unwelcome atmosphere and social and physical distance, as well as health issues (McCain et al., 1976; Paulus, 1988). When it comes to misconducts and violence the research results are less unequivocal, since some studies indicate less violence in smaller prisons (Snacken, 2005), while other point out frequent problems in smaller prisons (Farrington & Nuttall, 1980; Jiang and Winfree, 2006; Huebner, 2003). Related to size of prison is the question of (over)crowding which refers to building occupancy and density in relation to capacity (Engstrom & van Ginneken, 2022), which is also the factor determined partially by prison architecture.[5]

The age of a prison is also believed to impact the interactions and experience in prison setting. Differences between older and newer prisons could manifest in arrangement of space, size, lightning, colours, furniture etc. Research results suggest that conditions for both staff and prisoners are better in newer prisons (Shefer & Liebling, 2008) and that older prisons are not well suited to present-day needs and activities. However, some researchers found the prevalence of property and drug-related violations in older buildings (Morris & Worral, 2010).

It is widely believed that *prisons should be located* at a reasonable distance from the city. Cities are centres of political, economic, cultural and social life in the contemporary world (Paraušić, 2020). Considering the importance of urban transportation in citizens` daily life (Kolaković-Bojović & Paraušić, 2019), there should be a good transport connection between the city and the prison, which would facilitate visits by families

[5] The research findings in this regard are not conclusive, since some scholars indicated that "dormitory may have more physical space per person than a single or double cell, but a dormitory will have a much higher social density with many individuals sharing one room" (Engstrom & van Ginneken, 2022, p. 492).

and friends of prisoners, but also minimise travel time to work for staff. Analysing the location of prisons in Italy Giofrè, Porro and Fransson determined that present-day prisons are built on the city outskirts or countryside. These findings confirm that, in these cases, there is the will to move, or to build, prisons far from the city, away from people and their sight, preventing integration with community life. The prison is "something" that nobody wants "in his backyard" (Giofrè, Porro & Fransson, 2018, p. 59).

There are many initiatives to create as *many green surfaces as possible in prisons*, bearing in mind the positive influence they have on inmates. It is not just the more natural and humane look of the venue, but some argue that trees and flora attract birds, insects and other wildlife (Jewkes 2014; Jewkes & Moran, 2015), that can stimulate senses and feelings that prisoners experienced outside of the correctional facility. As Johnsen argues: "Nature is not neat and tidy, there are no straight lines, it is uneven and keeping one's balance when walking or running in this landscape can be challenging, especially going up and downhill" (Johnsen, 2018, p. 79). In existing research, nature in prison environment is reported to have significant positive consequences, such as sense of psychological support (Moran & Turner, 2019), positive emotional response (Jewkes et al., 2020), less self-harm among the incarcerated population, and violence both toward staff and among the incarcerated (Moran et al., 2020, 2021), but also positive experience of prison staff (Pavićević et al., 2020).

Differentiation between internal and external architectural traits and their influence on life in prison is purely analytical and should not be definitive. Categories such as aesthetic, colours or material used could be applied to prison interior, as well as exterior, and are not exclusive. One interesting case is related to security measures and technology, since cameras and various inspection devices are placed in the prison buildings but in the prison outdoor environment as well. Although security measures are necessity in correctional facilities, placement and design of technological solutions in prison environment could have tremendous impact on living and working conditions for inmates and staff.[6] Besides evident overlapping, the researchers could extend future investigations on how

[6] Liebling et al. (2012) found that the combination of a prison's layout and the overt use of surveillance cameras can contribute to a sense of self-consciousness or paranoia among incarcerated individuals. Alternatively, some evidence suggests that security technologies can replace the need for harsher security measures, like metal gates and bars, and create a perception of safer and more comfortable living environments (Engstrom & Ginneken, 2022).

different spatial features of correctional facilities interact and how could they be combined to create a positive prison environment.

It should be noted that the above-mentioned spatial factors influencing the prison experience mostly relate to the adult male prison population. Juvenile offenders placed in correctional facilities are s very vulnerable group in the sense that their physical, mental and social development will be permanently influenced by experience in prisons. Hence, besides the already outlined, there are other prison design factors that will be important to wellbeing of incarcerated minors.[7] The female perspective on lived experience in prison could also be very specific and their view on spatial characteristics of prison environment could vary depending on the context (see Ćopić & Batrićević, 2024). Prisoners that are disabled, chronically ill or aging will have different spatial needs when compared to other imprisoned persons, regarding the accessibility through a prison. Bearing this in mind there is still a research gap regarding the relationship between socio-demographic characteristics of inmates and different architectural factors of prison venues.

It should be noted that prison architecture is one of many dimensions influencing the overall quality of life in prisons. Future research could focus on how prison design and spatial factors interact with other dimensions of life in prisons such as relations in prison, the fairness of treatment and access to justice, the competence and conduct of prison staff, the predictability and fairness of prison rules and procedures, the level of safety and security within the prison environment, opportunities for prisoners to learn and grow and the physical and mental health of individuals within the prison population.

[7] This is also the case for teachers since they need to adapt to special teaching conditions, if we take in consideration the importance of implementation of different teaching practices (Kovačević Lepojević, Bukvić Branković et al., 2024) and their relationship with students' behaviour and wellbeing (Kovačević Lepojević, Trajković et al., 2024).

Conclusion

When thinking about prison design, one important question emerges, the one related to the role architecture and the architect have in creating correctional facilities. By its nature, design of building interior and exterior should provide the users a sense of comfort, aesthetic experience that will enhance the quality of their life. However, the prevalent thought throughout history was to create a place where prisoners, as social deviants condemned by society, should live in scarcity, loneliness and constant surveillance in order to repent. Extensive research has demonstrated that these conditions have severe negative consequences for prisoners` wellbeing and health. Why would an architect create a space that has such negative effects on human life and morale?

Different approaches to crime, penal and justice systems and the public's beliefs about punishment are inevitably reflected in the architecture of prisons. In this sense, Fowler (2015) opposes two distinct penal philosophies and correctional facility design in United States and Scandinavian countries. Exploring the two extreme approaches to prison design, to determine how the differences affect the inmates and the overall effectiveness of the prison system, she addresses the importance of considering the human experience in the design of prisons (Fowler, 2015, p. 374). There lies the need for the architect to design a space that will contribute to the rehabilitation of convicts and ease the pains of punishment.

In prison architecture, there has been a standardisation of basic prison functions, leaving very little room for the development of prison typology. The role of the architect is still significant, in terms of design, adaptation to the location, and even through aesthetic expression. However, the real progress of prison typology is preceded by thinking about new programs, which will fully utilise the spatial framework of that institution for the purpose of improving the quality of life within its borders. To ensure the wellbeing of inmates and staff, the interior and exterior design of space should bring comfort, create safe conditions for treatment and work of everyone in the correctional facility and mitigate stress and anxiety related to prison buildings.

Prison design optimistically should be relegated to an interdisciplinary group that includes the participation of experts in various sectors, from the urban planner and architects to the sociologist and so on, including the end users when possible. The approach to the topic of prison architecture must necessarily focus on the various categories of users, starting from identification, in the design process, of what the actual needs are, in compliance with the regulations in force – without losing sight of the fact

that the prisoner is a person like everyone else (Giofrè, 2018). Prison's location and design, its connotations of material and of sensory perception, can promote and encourage a specific use and good perception of the space, and might influence the prisoners' behaviour.

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Review Paper

Work During and After Serving the Prison Sentence: Double Precarization in the Service of the Preservation of Capitalism[1]

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Penal systems are not only mechanisms of social control, but also complex institutions that are deeply rooted in the wider socio-economic context. In various phases of capitalism, the prison system has functioned as an instrument of social control, which not only punishes, but also shapes and controls individuals, especially from the marginalized classes. Within this system, prison labor should be seen not only as an economic transaction, but as a form of unfree labor, thus perpetuating the cycle of poverty and criminalization. Neoliberal state policies often contribute to the precariousness of the prison labor force, using convicts as cheap labor. This kind of work usually includes low-skilled activities characteristic of informal, precarious jobs that are socially, legally and economically devalued. On the other hand, after release, the combination of social stigmatization, precarious employment and precarious conditions on the labor market (characterized by low-skilled, insecure and poorly paid jobs) creates fertile ground for further labor exploitation of ex-convicts. If they were not already part of the precariat, upon release, even if they had stable employment before serving their prison sentence, most ex-convicts face the challenge of concluding precarious work contracts, which further worsens their position on the social ladder. This paper contributes to the understanding of the complex interactions between penal systems and neoliberal practices, and explores the complex relationship between penal systems and capitalism, with particular emphasis on the impact of neoliberalism on prison labor and its role in the reproduction of economic inequalities. The aim of the paper is to show the way in which the double precarization of (former) convicts, both during the serving of the sentence and through reintegration and resocialization policies and inclusion in the

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labor market, contributes not only to the increase in the number of individuals who remain trapped in precarious positions on the labor market, rather, it enables the reproduction of neoliberal capitalist relations. In other words, this paper shows that the social and state attitude towards the prison population is only one in a series of gears that enable the preservation of the modern form of capitalism.

Keywords: *Penal systems, Precariat, precarious employment, Prison labor, Neoliberal capitalism*

Introduction

The relationship between penal systems and capitalism is a complex topic that has been researched for more than a century, and has become especially relevant in the context of global neoliberal transformations. Neoliberalism, as the dominant contemporary economic and ideological-political paradigm, shapes many aspects of social life, including the way penal policies are implemented and prisons are managed. The historiography of work in prisons points to several initial axioms. The first is that there has been prison work since the beginning of the prison as the institution, and the second talks about the nature and character of convict work that changes through different historical epochs, thus following the changing nature of the regulation of socio-economic relations. But before we briefly explain this, it is necessary to define the concept of prison work that will be used in this paper. By it we mean the work of the convict population in administrations for the execution of criminal sanctions (prisons) with the aim of producing goods and/or services that can bring economic benefits to various actors in and/or outside the prison, and which excludes daily and necessary work in the prison (such as cleaning the prison cells).

The wide spectrum of the history of work in prisons and the different forms it took, shows that the forms of punishment depend on socio-historical relations, i.e. that the forced labor of convicts in the nineteenth century and its various forms such as prison factories, prison farms, and the so-called chain bands also shaped the development of capitalism in certain geographical and temporal sections (Lichtenstein, 2011). With the change of capitalism, the development path of prison work, its character and role, as well as the discourse used to talk about it, also changed. Thus, in the nineteenth century, this work was viewed as a form of punishment, so that, initially with the understanding of work as a supplementary element of punishment, they arrived at the modern determination of the role of prison

work, which is characterized by the so-called non-punitive nature of the work. In other words, a path has been taken from a means of punishment and coercion to a method of treating convicts, aimed at resocialization and reintegration and professional training, and is based on the principle of reward (Ivanics, 2022; Pajić et al., 2012; Tanjević, 2019). However, this discursive change does not necessarily imply a humane change in the regime and the objectives behind them, and the compatibility of convict rehabilitation and economic exploitation of (cheap) labor is questionable. Namely, "Tóth (1886) stated as early as the second half of the nineteenth century, the question of prison labour, its regimes and goals behind, could only be examined substantively, if the interests of the different actors (the penal institution, private industry, the state and the society) are taken into account" (Ivanics, 2022, p. 62).

Regardless of the specific regime and form of prison work, i.e. regardless of whether there is a system of state use, a mixed (contractual) system in which prisons closely cooperate with private companies, or a leasing system, i.e. almost complete privatization of prisons (Ivanics, 2022), the prison industry is a full-fledged actor in the modern neoliberalized market. Even if we accept the thesis that the economic importance of prison labor is in the domain of production on the margins of global markets, there remain numerous open questions, only some of which are related to the issue of dignified work in prisons, the degree of mobilized coercion and work organization, the legal status of convict workers, issues of income and ways of disposing of income, differences compared to free labor outside prison bars, both in terms of fair and minimum wages, as well as in terms of the right to association, and whether labor in prison competes with free, cheap labor as a kind of internal "*offshore* labor enclaves" (Collins, 2024; Lichtenstein, 2011; Shang, 2018).

The objective of this paper is to show, but also to remind, that, despite the fact that prison work is most often framed as transformative and emancipatory, the issues of labor exploitation, undignified work, dangerous working conditions, and issues of class and racial dimensions, remain very current even in the neoliberal form of capitalism regulation of social relations. As some social geographers warn, prison labor is more or less not only exploitative or coercive, but comparable to other forms of the "free" (in)formal economy (Cassidy et al., 2020). Mass incarceration (hyperincarceration) in recent decades is closely related to the restructuring of the urban labor market, which at the same time represents a response to deindustrialization, but also helps to discipline the precarious, informal, occasional and illegal work that increasingly characterizes modern labor markets (Lichtenstein, 2011). Additionally, the obstacles they face,

marginalization, and (gender) stigmatization of former "rehabilitated" convicts, promote additional precarization. Therefore, it should be underlined once again, "the tendency to reduce prison labor to a simple economic transaction obscures its role as a fundamentally state-imposed form of unfree labor driven by both economistic and racialized social logics" (LeBaron, 2018, p. 153). The ethics of neoliberalism, which relies on the individualization of responsibility, often results in the stigmatization of already marginalized groups, while at the same time legitimizing the repressive measures of governments. In this context, the prison system becomes an instrument for managing social waste, and convicts are often seen as resources that can be exploited for profitability.

The structure of the paper is designed so that we first show different theoretical frameworks and empirical data that point to complex relationships between penal systems, neoliberalism and economic inequalities. After that, special attention was paid to the analysis of precarization as a central phenomenon that manifests itself through various forms of work inside prisons, but also after leaving them. Finally, although the scope of the paper precludes a more detailed presentation and analysis, we will also touch on how these processes intersect with issues of gender, race, and class.

Neoliberalism and the (political) economy of imprisonment

The relationship between penal systems and capitalism has preoccupied social theorists for more than a century. One of the first and more important structural explanations of the functions of prisons and prison labor in capitalism was offered by Georg Rusche and Otto Kirchheimer in 1939, pointing out that each social epoch has a penal system that corresponds to the prevailing economic needs and regime of capital accumulation, and that prison labor had a constitutive role in the creation of the capitalist social order and has its political and economic significance as an important part of state strategies aimed at implementing social and labor discipline. They will later, during the 1960s, inspire revisionist historiographers, who question the traditional narratives about prisons and argue that the dominance of prisons cannot be explained only by ethical or humanistic reasons, but that prisons are a functional part of maintaining social control and reproducing capitalism. The tradition of the materialistically oriented Rusche-Kirchheimer duo was the support for the emergence of radical criminology, which closely links the criminal justice system to the interests of the ruling class and serves to maintain inequality in society. Radical criminologists pointed to the correlation of economic conditions to the use of prison

sentences and showed that changes in economic relations, such as the relations between capital, labor and the state, have a direct impact on unemployment rates and incarceration rates (Ivanics, 2022).

We are well acquainted with the first major penal turn in the modern history of punishment at the turn of the 18th and 19th centuries in the writings of Michel Foucault, and this turn brought with it a more efficient system of penal authority and the fabrication of obedient individuals. Power began to manifest itself in the form of disciplining, subjugating, training and guiding the body, thus creating an economic type of punishment, which was fully compatible with the contemporary stage in the development of capitalism (Foucault, 1997). One of the last major modern penal developments, which is most obviously seen in mass incarceration, must be understood in the context of neoliberal globalization and the crisis of capitalism. The rate of incarceration in the United States began to grow exponentially in 1976 (Delia Deckard, 2017), when the neoliberal form of capitalist regulation of social relations began to decline on the historical stage. Punishment and the threat of punishment are becoming more and more necessary in order for states to maintain control over their territories, citizens, but also the so-called non-citizens (*denizens*[3] (Standing, 2011)). The neoliberal imperative to which everyone aspires is to be a fighting member of society who is productive and efficient, and above all, cherishes the value of individualism. However, the rate of incarceration is not necessarily the result of the growing "criminality" of members of society, but reflects the shifts that occur in the penal solution of social problems, which were previously defined as problems by the social elite and those in power (Cassidy et al., 2020).

The ethics of neoliberalism rests on a strong individualization of responsibility, in the context of increasingly pronounced economic and social risks, where individuals must be sufficiently durable and able to survive. Moral autonomy is defined as an individual's ability to take care of his own interests, and moral behavior is reduced to a rational consideration of costs and benefits, while solidarity, social justice and social support are rejected as "cultivating dependence" (Pavićević et al., 2024). The idea of individual responsibility, which is often used as a justification for

[3] Neologism from Eng. *deny* (deny, dispute) and Eng. *citizens* have a significantly more limited range of rights than citizens, all those who do not enjoy some of the basic civil rights: equality before the law, the right to satisfaction of cultural, social (social protection, pensions, health care), economic (the right to be paid for their work), political (the right to vote and participation in the political life of the community) needs. Non-belonging citizens are "supplicants", begging for favors and any benefits, and a special group of denizens is made up of migrants (Standing, 2011).

inequality, serves as a cultural trope that further marginalizes already disadvantaged groups, while at the same time legitimizing repressive measures taken by the state against them (Wacquant, 2014). As Wendy Brown has warned, *neoliberalism as a new way of thinking* is changing business practices, democracy, working life, political culture, vocabularies, education, and entering every aspect of life. Relying on and further expanding Foucault's notion of government and ways of governing, this American political scientist defines neoliberalism as more than statehood and political and economic rationality, as an all-pervading rationality, a comprehensive governance that goes beyond the market, and therefore has political and social implications. An important neoliberal transformation is also the one that resulted in a dramatic increase in the privatization of prisons in many countries. This transformation has affected not only institutions, but also individual rationality has been transformed by neoliberalism, on a micro level, which affects the lives of convicted persons, their families and the communities to which they belong (Clark, 2016). By using magic words like "rehabilitation" and "reintegration", the work and exploitation of prison labor is justified as enabling prisoners to be more resilient and to cope more easily after leaving prison, shifting the responsibility onto individuals and their families, and successfully rejecting any responsibility of the state.

The insight into transformations in the penal system at the dawn of neoliberalism offered by sociologist David Garland provides a significant analysis that encompasses a wide range of social changes that have shaped the way crime and penal policy are perceived in contemporary society. His claim about the rise of criminality, the decline of the importance of criminological studies and the growth of penal populism points to the complexity of the relationship between social factors and penal policies. Garland's focus on the rise of crime during the second half of the twentieth century emphasizes that the increased involvement of politicians in decision-making on criminal sanctions can lead to so-called *penal populism*, where punitive measures are often enacted in response to the pressures of public opinion, rather than as a result of thoughtful criminological research. Furthermore, he warns that the commercialization and privatization of penitentiary institutions can affect the quality of services provided to convicts and the general perception of justice in society (De Beir, 2023).

Unlike Garland, who attributes the punitive turn to late modernity and claims that neoliberalism is too narrow a framework for analysis, the French sociologist Loïc Wacquant sees neoliberalism as an engine for change, which is not only an economic model, but also a sociopolitical framework that shapes ways on which societies manage deviance and marginalized groups. As Wacquant points out, hyperincarceration (mass

incarceration and expansion of penitentiary institutions) is not a reaction to the increase in crime, but a response to social insecurity arising from economic changes, such as deregulation of the labor market and reduction of social protection. This change in the paradigm of penal policy indicates that instead of social integration of marginalized groups, the logic of segregation and punishment is increasingly applied. In other words, penal and social policy are closely related, because it is the state that manages social relations and replaces social policy with punishment. Even if we accept that there has been an increase in crime, it is a consequence of the fact that thanks to the neoliberal abolition of the former welfare state and the introduction of compulsory work for the compensation of welfare payments (the so-called *workfare*), members of the deprived urban precariat are more strongly directed to violence. According to Wacquant, the prison system disproportionately affects certain populations (in the USA it would be members of the African-American community) and represents nothing more than the continuation of historical patterns of racial discrimination, and the neoliberal penal policy perpetuates and deepens existing social differences. In this sense, the penal system becomes a tool for controlling and managing urban poverty (Lichtenstein, 2011; Pavićević et al., 2024; Petković, 2011).

In the European context and beyond, although incarceration rates are relatively lower than in the USA, there is a trend of increasing penal policies that rely on similar principles. This shift indicates that neoliberal ideas about penal policy and the management of social relations have become global rather than just local phenomena. As Wacquant points out, we are witnessing a "transnational policy transfer encompassing the flexible reorganization of the low-wage labor market and the restrictive *revamping of welfare into workfare* after the pattern provided by the post-Fordist and post-Keynesian United States" (Wacquant, 2014, p. 74). Additionally, we can talk about the similarities between convicts and free citizens to whom the workfare policy is applied. In both cases, work is socially, legally and institutionally constructed as penal, in both cases there is coercion of work, and the possibility to refuse a job or an employer is significantly limited. This leads to a lack of economic independence and the inability to enjoy the full rights and freedoms associated with substantive citizenship, despite having formal citizenship (Hatton, 2018).

Wacquant's idea of the invisible hand of the market calling to action the iron fist of the penal state (Wacquant, 2014, p. 79) provides a strong basis for understanding how neoliberal reforms manifest themselves in the form of the expansion of penal institutions. This phenomenon is not only the result of increased criminal insecurity but is deeply rooted in the structural changes that have taken place in societies (both in the center and on the

(semi)periphery of the world capitalist system) during the last decades. The key idea is that stingy "*workfare*" and generous "*prisonfare*" represent two faces of the same organizational device aimed at disciplining and controlling the poor. This duality is not accidental, it fits into the broader philosophy of moral behaviorism that seeks to shape the behavior of individuals through various mechanisms of reward and punishment. The introduction of strict police measures, rigorous judicial practices and the expansion of prison capacity is not a departure from neoliberalism, but a necessary means of it. Modern penal systems participate in a broader process of reengineering and remasculinization of the state. This process renders conventional divisions between social welfare and criminal justice obsolete, indicating that the police, courts and penitentiary institutions are not just technical tools for responding to crime. Rather, they represent key political capacities through which the state produces and manages inequality, marginality and identities (Wacquant, 2011, 2014).

Precariat and (market) exploitation of prison labor

In this chapter, we will show that prison labor cannot be reduced to an economic transaction, but represents a *fundamental form of unfree labor caused by the social and economic logics of the capitalist modus operandi*. Although some theorists compare prison labor to slave labor, international human rights documents and instruments do not equate prison labor with slave labor, nor with the internationally condemned version of forced labor or involuntary servitude. However, given that it is legally used in most prison systems, prison labor can be seen as a form of forced labor. In other words, although legal frameworks officially prohibit slavery and forced labor, states are allowed to impose labor on convicts as an "*exception to forced labor*." Some theoreticians even go so far as to claim that, although disguised, it is about the enslavement of people, because regardless of the fact that convicted persons receive a modest and insufficient compensation, they are the *property of the state* at the same time while serving their sentence. On the other hand, there are voices of theoreticians who emphasize the *control* (rather than ownership) of the labor force, which is prevented from entering the labor market under equal conditions with other market participants, proposing a broader definition of unfreedom that includes various types of unfree labor relations (not only prison labor, but also various modern precarious labor contracts, bonded labor, etc. are also included under the same umbrella). This dynamic within the penal system is shaped by the economic interests of the state, which actively creates a "new market" for the products of prison labor (Ivanics,

2022). Thus, in the second decade of this century, the majority of the over 2 million convicts who make up the convict population in the USA worked for the state and not for private companies, where the working conditions are often worse than if they worked for the private sector. Although earlier systems of prison labor were more strictly regulated, modern legal frameworks have enabled the profitable work of convicts, and a large number of them work on prison maintenance, without compensation, which is a form of unpaid work (LeBaron, 2018).

Although there are many changes compared to earlier periods of prison work, the essential retention and improvement of the market logic and market principle can be seen most clearly in the application of market discipline. Particularly in the USA, these principles are used to justify the division of labor and rewards within the prison system, promoting the idea that convicts should behave as disciplined market subjects. The focus of market discipline in these programs is formally more on maintaining order and control than on making a profit, but the essence is that market principles are used to shape the organization of prison work, emphasizing the importance of understanding the role of the market in controlling individuals in the prison system, and market ideas are increasingly more used in prisons to facilitate state control (Reich, 2024). Moreover, it is important to note that the *state can use labor both as a punishment and as a remedy*. If we look at the state's attitude towards migrants and convicts, we see that in the first case the state uses various forms of control, denial of opportunities and the right to work in order to punish, segregate, isolate and control immigration. In the second case, with convicts, work is used as a way of integration, transformation and rehabilitation. In search of unlimited capital accumulation, private companies try to take advantage of cheaper and more flexible labor, and prisons are a convenient solution. They contain obedient and cheap labor, and the prison itself turns into a kind of temporary labor agencies or subcontractors (Cassidy et al., 2020).

Historically, slavery systems subjugated black people to force them to participate in the market as laborers. However, some authors talk about a contemporary alternative form of subjugation, which is a highly racist form of domination and exploitation and is linked to state strategies to maintain a disciplined workforce and market social order (LeBaron, 2018), and convicts even become *forced consumers*. Researchers in the USA introduced the concept of "*million dollar blocks*", wanting to highlight the connection between concentrated poverty, lack of resources and high costs of the penal system. These are city blocks and areas where the annual cost of incarcerating residents exceeds $1 million, with a high concentration of formerly incarcerated residents. The very existence of these "million dollar

blocks" indicates an economic motivation for hyperincarceration. Mass incarceration can thus be seen as a means of social control in the face of growing inequality, but also as a way to force marginalized people to participate in the market as consumers rather than workers. This practice can be seen as an extension of historical methods that marginalized groups used to meet market needs. In other words, the current crisis of late capitalism is no longer a labor shortage, but a lack of demand, and increased government expenditures in the areas of criminal sanctions enforcement contribute to an increase in overall demand, where prison spending plays a key role without inflationary consequences (Delia Deckard, 2017).

The concept of the "prison industrial complex" additionally illuminates the economic dimension of the previously presented phenomenon. The privatization of prisons and the exploitation of convict labor by corporations is not only a moral issue, but also an issue of social justice. This dynamic indicates that penitentiary institutions have become part of a wider economic system that relies on the marginalization and exploitation of vulnerable groups (Koros, 2010). National and local governments often want to build prisons because they see them as a means of economic renewal, thus attracting new companies and creating local employment opportunities. However, there is a risk that economic interests will lead to tougher crime policies and increased incarceration, turning the prison industrial complex into a so-called prison (carceral) industry. In the USA, this type of employment system led to prisons becoming the third largest employer in the second decade of the 21st century, and in France there are examples of local authorities agitating for the construction of new prisons for the sake of "economic reconstruction" of the system (De Beir, 2023).

Additionally, prison systems represent just one more link in the chain of neoliberal market policies. States that have implemented neoliberal measures have faced increasing inequality, a dual labor market, the growth of power and wealth of the upper class, the decline of wages and living standards, privatization, financial instability, the growth of unemployment, insecurity and the reduction of all forms of social protection. In short, precarity is becoming the new normal. Precarity represents general insecurity, which is the result of the forty-year hegemony of political and economic neoliberalism. Although precariousness also existed in the previous stages of capitalist production, in the previous stages of the development of capitalism it was linked to the crises of this socio-economic system (every time capitalism fell into a crisis, workers easily became redundant, and the position on the labor market became more precarious), but in the contemporary neoliberal form of capitalism, precariousness becomes a norm without which the system could not function, and the

process of precariousness cuts the social structure vertically (Marković, 2019, 2020, 2023). The reduction or abolition of state social services ultimately leads to the disciplinary regulation of poor workers, who are replaced by "rehabilitated" convicts ready to work for minimum wages (Pavićević et al., 2024, p. 101).

In Foucault's and Wacquant's framework, prison can also be seen as a tool of government to manage marginalized populations (Koros, 2010). Crutchfield's (Robert Crutchfield) hypothesis is famous, which shows that within the dual labor market (especially young people) engaged in the secondary labor market are more prone to criminal activities than those who work in the primary labor market, in more stable jobs. At the end of the last century, this American sociologist showed the existence of a positive correlation between the time spent outside the labor market and criminal activities, and if employees expect a longer working relationship, the tendency to criminality also decreases (Crutchfield & Pitchford, 1997). In this framework, hyperincarceration in the last three decades can be linked to changes in the labor market, especially in response to deindustrialization. The penal system, primarily through the absorption of the unemployed, contributes to the regulation of the lower sectors of the labor market, and former convicts, after leaving prison, enter the labor market as marginal workers who are subject to exploitation. Given that the prison population can artificially reduce the unemployment rate, economists and sociologists point to insufficiently researched incarceration processes over the past three decades. In states with the highest number of convicts, criminal justice funding has shifted resources to rural and deprived areas. These areas actually profit from prisons that serve as "social waste management facilities". In this way, especially "American prison apartheid" depends on a precarized labor force, which is predominantly made up of the African-American and Latino population, which contributes to the economic survival of rural whites, and the state effectively monetizes otherwise "economically worthless" segments of the population (Delia Deckard, 2017; Lichtenstein, 2011).

The dominant narrative, which was uncritically accepted until recently, is that education, work and professional training of convicted persons play a key role in reducing recidivism (Ilijić, 2014, 2022; Pajić et al., 2012; Tanjević, 2019). Working in prison supposedly brings benefits at the micro, meso and macro levels. At the micro level, the focus is on structuring daily activities, which contributes to the development of responsibility, self-discipline and social relationships. At the meso level, prison labor brings positive effects to the prison system, including economic gain and maintenance of discipline. On a macro level, this activity helps in the

resocialization of convicts (Ivanics, 2022). The most recent results of research in Serbia show that convicts who are engaged in work have a better assessment of various aspects of life in prison, including harmony, professionalism and contact with family, security, well-being and development (Ćopić et al., 2024).

However, global dissatisfaction with the results of resocialization programs is increasingly leading to a reevaluation of existing programs and systems. The rehabilitation ideal has been replaced by new methods of penal control, in which the public-private strategy is focused on savings, and the penal policy is privatized (Pavićević et al., 2024). Criticism also refers to the ineffectiveness of training in prisons, which often does not provide the necessary skills for reintegration into the labor market. Although there are positive examples of prison work reducing recidivism, the skills acquired are often insufficient and focused on low-skilled jobs, which can negatively affect the readiness of convicts to work outside prison. In other words, the main motives behind prison work are profit and engagement rather than rehabilitation, which casts doubt on the actual effectiveness of such programs (Cassidy et al., 2020). Critical criminology also points to the incompatibility of the moral nature of work, as understood by European liberalism, with the reality of many countries marked by traces of slavery and colonialism, together with neoliberal capitalism. Representatives of this movement claim that working in prisons does not lead to adequate compensation or emancipation, but rather neutralizes and stigmatizes convicts, who are often exposed to the worst living conditions. In addition, critical criminology reveals the inefficiencies of prisons and the way capitalism affects notions of work, particularly by analyzing women's prisons. The androgynous character of the law is noticeable in them, and the jobs in prisons themselves are mostly focused on "housework" with low or non-existent compensation. As a result of patriarchal repression, representatives of critical criminology claim, training is not adapted to women, which makes it difficult for them to integrate into the labor market and achieve financial security, and the moral imperatives of women as housewives further distance them from the objectives of resocialization and emancipation (Dutra, 2021).

Before moving on to the different models of prison work that exist in practice in different countries, it is necessary to briefly show how wide a variety of jobs are performed by convicts around the world. In fact, there is insufficient knowledge about the variety of jobs in prison institutions, and even less research on the views of prisoners about the jobs they are engaged in. The United States prison system, the largest in the world, uses a combination of exploitation and rehabilitation to secure political and

public support for the resources needed to "manage" convicts. Prison agriculture is particularly illustrative, linked to racial capitalism and the criminalization of poverty, leading to the exploitation of convicts on plantations (Chennault & Sbicca, 2023). One of the cases that attracted a lot of public attention in the USA is the case related to the Whole Foods company, which in 2015, after the protests held in Houston, decided to sell products such as cheese and fish produced by convicts in prisons (Feldman, 2020). In the United Kingdom, jobs performed by convicts range from basic domestic work within prisons to providing services to other government institutions, such as processing industrial laundry for prison or hospital complexes. Also, there are private companies that hire prison labor for routine and low-cost jobs, such as packing books or assembling headphones (Cassidy et al., 2020). American and British convicts are not the only ones working to produce commercial goods; convicted persons in Russia, China, Thailand and other countries are also involved in work for private firms (LeBaron, 2018). In Serbia, convicts are mostly engaged in horticulture as a form of employment. Convicted persons work in gardens and on agricultural land, producing fruits, vegetables and grains, which are used to feed themselves and the employees of the prisons. In addition, there are long-term collaborations with various institutions and companies, and convicts often work on landscaping jobs outside the prison, such as afforestation and maintenance of public flower gardens (Pavićević et al., 2024).

It is particularly interesting to look back on the exploitation of convicts in times of crisis, who were hired as "cannon fodder", on the so-called 3D jobs (*dirty, dangerous, demeaning*). Thus, for example, the state of Arizona (USA) has a program (Inmate Wildfire Program) in which a certain number of convicts are engaged in fighting fires across the country. Convicts are thus forced to face a paradox: while their deeds are commendable and of vital importance to the community, their rights and well-being are often neglected. Hiring convicts brings significant financial savings to the government, but this should not be a justification for their exploitation (Feldman, 2020).[4] Moreover, some authors talk about the phenomenon of "climate carceralism", which reflects the complex interdependence between the economic benefits for the state and the human rights of convicted persons. It is about convicts being used more and more in situations when the recruitment of civilians stagnates in crisis situations,

[4] The quote from one of the convicts involved in crisis situations is illustrative: "I saved lives as an incarcerated firefighter. To California, I was just cheap labor" (Mota, 2020).

which results in serious ethical and social issues. Thus, the state of California (USA) saves hundreds of millions of dollars a year by using convicts as firefighters ('Climate Carceralism', 2023). The issue of climate carceralism also relates to the broader context of climate change and its impact on human society. As natural disasters increase due to climate change, states are expected to seek new ways to manage resources and human labor. This approach can result in an increasing reliance on convicts, who are often seen as a readily available source of labor in crisis situations. Even a domestic example is illustrative, where during the COVID-19 virus pandemic, members of the "Posle kiše" ("After rain") association helped the Kragujevac Clinical Center, risking their lives in the red COVID zone.

Models of prison work and privatization of the prison industry

The role of the private sector in the prison industry has become an increasingly important topic in contemporary research into prison work and prison management systems. This phenomenon is not new, but can be traced back to 1930 when the International Labor Organization (ILO) adopted the Convention on Forced Labor (Thalmann, 2004). Within this convention, the ILO differentiated three basic prison labor systems: the contract labor system, the piece rate system, and the state management system. These models provide a basis for understanding how approaches to prison work have developed over time, and how they have adapted to economic, political and social contexts. The first system, the system of state use, represents a model in which the prison organizes the workforce, and the products are used exclusively for the needs of the prison or other public bodies. The second system, the contract system, means close cooperation between private companies and prisons. In this model, private companies undertake to hire convicts to perform various jobs, often with profitable arrangements. Finally, the leasing system is a model in which the management of the prison workforce is completely outsourced. Apart from these basic models, it is important to mention other forms of organization of prison work, including the system of public works and work outside penitentiary institutions, as well as mixed systems (Breysem, 2018; De Beir, 2023; Ivanics, 2022; Uzelac et al., 2008).

When it comes to different models of privatization of prison work, we can distinguish between two basic models - the British and French models. British model, dominantly represented in the United Kingdom, the United States of America, Australia and South Africa. This model, as well as all its variations among the countries in which it is applied, in principle allows

private companies to manage the prisons entirely, including responsibility for the safety of the inmates. In this structure, the state retains certain authorisations, especially those related to judicial proceedings. This division of responsibilities may seem functional at first glance, but it is actually prone to numerous problems. First of all, the main motive behind the privatization of prisons within the British model is economic - private companies are motivated by profit, which can lead to situations where profit is more important than the rehabilitation of convicts. For example, a payment system based on the number of prisoners may encourage private companies that hire prison labor to favor filling the prison capacity, which may result in a longer stay of prisoners in correctional institutions, which is not in accordance with modern principles of rehabilitation, reintegration and inclusion in society. On the other hand, the French model originally appeared in France and has since been implemented in several other countries such as Brazil, Chile, Germany and Japan. The French model is characterized by a combination of the public and private sectors, where private companies take over certain functions, while the state leaves key aspects of governance and security to itself. This approach may seem attractive because responsibility for core functions is retained by state authorities. However, in practice, such a mixed system can lead to ambiguities in the division of responsibilities, which can hinder the effectiveness of management. For example, if private companies are responsible for some services and the state for others, there may be situations where responsibilities are shifted from one to the other, leaving convicted persons without adequate protection or rehabilitation. In addition, it is necessary to consider the ethical aspects of the privatization of prisons. In the British model, where profit is openly the primary motive, the human rights of convicted persons may be violated. The quality of services may be lower and conditions in prisons worse, which may lead to an increase in violence and disorder within the prison system. In this context, research has shown that private prisons often have higher rates of violence and fewer opportunities for rehabilitation compared to state prisons. The French model, although it may be more attractive in terms of retaining state responsibility, also has its weaknesses. For example, although the state is expected to provide security, but again private companies have an interest in minimizing costs, which may result in a reduction in the number of guards or a reduction in the budget for rehabilitation programs (Breysem, 2018).

Another typology of convict labor management in privatization systems is the division into the customer model, the employer model, and the workforce model. The customer model implies that the private sector buys convict's products for resale. In the employer model, private companies directly hire

convicts. A workforce model, where state services manage convicts while private companies oversee work processes, can act as a middle ground, but here too the question of accountability arises. In other words, when the penitentiary sector is (fully) privatized, the question arises as to who actually bears the responsibility for the rehabilitation of convicts and ensuring their work rights. In the system of privatized prisons, private companies take control of work processes, which can lead to neglect of ethical standards and human rights of convicted persons. In this context, the importance of proper regulation and oversight becomes apparent, to ensure that private companies do not put profits before the rights of convicted persons. A comparison with the convict leasing system from the past decades is an illustrative example. In that system, private contractors paid the state for the use of prison labor, while today the opposite trend can be observed, where the state pays private companies. This change paradigmatically shifts the focus from the rehabilitation of convicts to the profitability of private firms. Violation of labor rights of convicts, as well as their exploitation for minimal compensation or even no compensation, becomes an inevitable issue that must be raised within this system (Breysem, 2018).

Finally, the arguments for and against the privatization of prisons and the inclusion of the private sector in the prison industry can be summarized as follows. One of the most frequently cited arguments in favor of prison privatization is the potential for cost reduction, as it is estimated that private prisons often achieve savings of 10 to 15% compared to state prisons. However, the problem is that cost reduction should not come at the expense of the quality of services and the safety of convicts. Proponents of privatization often argue that the private sector can provide convicts with the skills needed for employment after release. Research shows that convicts who participate in work programs are less likely to reoffend. However, critics point out that many convicts who participate in these programs already have previous employment, which can skew the results. In addition, prison work often consists of low-skilled jobs that do not provide real marketable skills. Also, the low wages that convicts receive can affect the price of work outside of prison, which further complicates the already tense situation on the labor market. One of the most important arguments against the privatization of prisons is ethics. The fact that private companies profit from fines and prison services is questionable, to say the least. In other words, the question that arises is whether it is right for profit to be the main motivator in a system that deals with human freedoms and punishments? Additionally, prison privatization can lead to "creaming", where private prisons focus on "easier" convicts, leaving state prisons with "harder" cases (Thalmann, 2004).

Legal, ethical and social aspects

The issues of the right of convicts to work, as well as the rights arising from their employment, are becoming more and more relevant and complex. Understanding these rights requires a detailed consideration of both legal and ethical aspects related to convict labor. The fact that the level of rights based on convict labor is often significantly lower than the rights of free workers points to deep systemic deficiencies that should be addressed.

Although the situation varies from country to country, the common denominator is that there is concern about the living and working conditions of convicts involved in labor process activities. There is evident resistance to the formalization of work contracts for convicts. This practice may jeopardize their ability to exercise basic rights available to other (non-incarcerated) workers. This is not only a legal issue, but also an ethical and social issue. As we have pointed out several times, these individuals are often faced with precarious working conditions and the inability to realize their full potential as a workforce, and risk being exposed to exploitation, which further worsens their already difficult circumstances. Also, issues such as adequate compensation and paid leave represent a serious challenge in most systems, and concern basic human rights. Convicts who work deserve compensation that is not only symbolic, but allows them a dignified life and even the possibility of saving or sending money to their families. Additional problems are related to inadequate payment of overtime and compensation for work injuries. Also, the rights to paid leave, which are provided to all other employees, are necessary in this case in order to facilitate periodic vacations and rehabilitation, which would contribute to better mental and physical health of convicts. Finally, the negation of collective rights, such as the right to organize a trade union, represents another aspect of this complex problem. This exclusion not only prevents convicts from voicing their needs and complaints about working conditions, but also reduces the opportunity to participate in collective negotiations that could lead to improvements in their rights and working conditions. Simply, convicted persons are not considered "employees" in the classical sense, which creates legal obstacles for their access to the collective rights enjoyed by free (non-incarcerated) workers. However, international standards such as those set by the United Nations, the International Labor Organization (ILO) and the Council of Europe clearly indicate the need to review these legal frameworks. (Aguiar et al., 2022; Robin-Olivier, 2024; Shang, 2018).

If we are talking about privatized prison complexes and the so-called private prison industry, which has experienced expansion in recent decades, it is not rare to hear criticism directed at the account of the dehumanization of convicted persons. The basic question is to what extent convicts, who are already vulnerable by the nature of their situation, are additionally endangered in systems that favor profit over human rights. Although international instruments, such as the Universal Declaration of Human Rights, insist on respecting the dignity and rights of all individuals, their application in private prisons remains questionable. The legislative framework, including the International Convention on Forced Labour, which relies on clearly defined exceptions, provides some protection to convicts. However, these instruments are often too general and do not directly address the problems posed by the privatization of prison services. For example, Convention No. 29 allows convicts to work under certain conditions, but does not take into account situations in which convicts are forced to work due to pressure from private companies that pay attention exclusively to economic profit. This situation can create a legal gap where private institutions can be exempted from liability (Breysem, 2018).

Precarization of former convicts

The problems faced by ex-convicts are not only formal and legal, but deeply rooted in social norms and values that often marginalize and stigmatize this population. One of the key aspects of post-penal reintegration is the understanding of parallel life, where informal value systems and formal norms collide. Ex-convicts often face obstacles that result not only from their previous crimes, but also from the cultural stigma that accompanies them, and a criminal record significantly reduces an individual's bargaining power when seeking employment. For some, this situation is further complicated when we consider that some ex-convicts are deprived of the right to work, which creates a triple obstacle in the post-penal situation: lack of accommodation, social stigma and legal deprivation of the right to work. Research has shown that ex-offenders and convicts encounter a number of obstacles in the employment process. Employer’s negative attitudes toward this population often result in reduced employment opportunities, erosion of work skills, and weakened labor market connections. Due to low wages and insecure jobs, ex-convicts find themselves in a vicious circle of precarization, where options for legal and stable work are very limited. Low self-confidence and pessimistic expectations regarding their own capabilities further complicate their access to the labor market. Additionally, many ex-convicts face digital illiteracy,

which makes it difficult for them to access modern technology-based forms of employment. All of this can potentially push ex-offenders into unemployment, criminal activities and/or entering the gray or black labor market (Batrićević et al., 2020; Cassidy et al., 2020; Durnescu, 2019; Shoham & Haviv, 2024). In this way, precarization is twofold, first individuals are additionally precarized by the jobs they perform in penal correctional institutions (which we talked about previously), and then when they are released, the precarization continues and intensifies.

One of the main arguments for the introduction of various job training programs in prisons is that later reintegration into the labor market reduces recidivism rates, and the latest research into the effects of job training programs conducted by the Israeli Prison Service showed that recidivism rates remained relatively constant, but that there is a positive impact of the program on other aspects of the participants' lives, such as employment stability, income level, involvement in paying taxes and using social services (Shoham & Haviv, 2024). An ethnographic study conducted in Romania between 2014 and 2016 provided significant insight into the complexity of employment pathways for ex-convicts, highlighting the direct link between personal and social capital, available resources and the environment in which participants live. This analysis not only illuminates the obstacles ex-convicts face in the labor market, but also the differences between different groups, especially in the context of Roma and non-Roma populations. Basically, the results of the study showed that the process of reintegration into the labor market for ex-convicts does not depend only on their individual motivation or ability, but also on the wider social structure and support networks available to them (Durnescu, 2019).

The gender dimension is particularly important in this context. A study in Chile analyzed the employment patterns of 207 women during the first year after their release from prison, revealing significant heterogeneity in employment trajectories by type of job, but also highlighting the limited overlap between criminality and employment despite high levels of labor market marginalization. These findings highlighted the complex nature of the problem of reintegration for female prisoners, which can be subject to severe structural barriers that extend far beyond the moment of release. One of the key insights is that many of these women are forced to rely on precarious jobs that are poorly paid and without prospects. This phenomenon can be related to Crutchfield's previously stated stratification hypothesis, which suggests that the types of jobs available to individuals after leaving prison depend on their previous employment and educational level (Larroulet et al., 2023).

Beyond the aforementioned economic barriers, critical criminology offers a deeper understanding of the patriarchal structures that shape women's experiences in prisons. In the Brazilian context, as a recent study has shown, prison institutions are organized in a way that does not meet the specific needs of female prisoners. Conditions in prisons, including poor infrastructure and a lack of appropriate programs, make the process of resocialization difficult. The programs that are available often focus on domestic work, and the skills that female convicts are trained for through such programs are far from those that could ensure successful reintegration into the labor market after leaving prison. Additionally, the very idea of resocialization through prison work often proves to be illusory, and the policies of the prison system reproduce patriarchal repression, leaving women to struggle with systems that were set against them from the start (Dutra, 2021).

Conclusion

The prison system is more than a simple institution for punishment. It is deeply rooted in the capitalist framework and functions as a means of controlling and managing the workforce. Even Friedrich Engels pointed out that capitalism needs a complex justice system that will regulate the workforce, and prison can be seen as one of the mechanisms through which socioeconomic dominance is maintained (Petković, 2011). In this sense, prison becomes a space that not only punishes, but also disciplines, shapes and controls individuals, especially those from marginalized social strata. The structural crisis of capitalism, which led to the collapse of the social welfare state and the policy of state interventionism of the 20th century, resulted in the birth of a neoliberal form of capitalist regulation. The process of precarization is necessary for contemporary neoliberal capitalism in order to successfully continue the accumulation of capital. The relationship between penal systems and capitalism is a complex and multi-layered analysis that requires careful consideration of various theoretical frameworks and empirical data. In this paper, key aspects of how penal systems reflect and shape social, economic and political dynamics within the capitalist order are explored, with special emphasis placed on work during and after serving a prison sentence. Through the prism of various theorists, it has been shown how penal systems function as instruments of social control, but also as means of reproducing economic inequality and the neoliberal form of capitalist regulation of social relations.

Despite the many changes that have occurred in the way penal systems are organized and implemented, the basic function of prisons as a mechanism for disciplining and subjugating remains unchanged. This function is particularly manifested through neoliberal reforms, which have led to an increase in incarceration rates and the transformation of prisons into instruments for controlling poverty and marginalized groups. Neoliberalism is reflected not only in the increased privatization of prisons, but also in the ways in which prison work is organized. Many convicts face working conditions that are far from what they could expect in the free market, leading to further marginalization and exploitation. Additionally, it is shown that prison labor cannot be understood only through the prism of economic transaction, but as a fundamental form of unfree labor, which is deeply rooted in the logics of capitalism.

In order to better understand the effect of prison work on convicted persons, it was necessary to consider the precarization that occurs both inside the prison and after their release. Precarization in this context represents a double process, where individuals face various forms of labor exploitation while in penal correctional institutions, and when they are released, stigmatization and discrimination await them, which further complicates their return to society. In this way, the prison system not only creates precarious working conditions inside the prison, but also contributes to the further marginalization of ex-convicts, thus perpetuating the cycle of poverty and criminalization.

The limitation of the scope of the work prevented a more detailed commitment to the gender dimension of the analyzed problem, but there is certainly room for further problematization of this issue. Finally, it is important to recognize the ideological fallacy that suggests the existence of two separate worlds: prison life and free life (Lichtenstein, 2011). These worlds are actually intertwined and the boundaries between them are very porous. Most convicted persons eventually return to society, often with a stigmatized identity and limited opportunities for reintegration. Only through such a comprehensive understanding, it is possible to achieve a society in which each individual destiny is respected and valued.

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Review Paper

Dynamics of Staff–Prisoner Relationships: A Narrative Literature Review[1]

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Staff–prisoner relationships play a critical role in the success of prison systems. This paper aims to examine the dynamics of these relationships and their impact on the prison environment, focusing on the key factors that influence these interactions and their potential outcomes. A total of 65 studies were analysed in this narrative literature review, covering the years 1961 to 2024. The quality of the relationships between staff and prisoners is associated with perceived prison quality of life and its moral and social climate. Positive relationships foster trust, respect, and compliance, reduce defiance and improve rehabilitation outcomes. Factors influencing these relationships include procedural justice, communication styles, shared values, and organisational factors. Procedural justice, or fair and respectful treatment, enhances perceived legitimacy and reduces negative outcomes. Effective communication between staff and prisoners is essential for positive interactions. Shared values and understanding can foster trust and cooperation. Organisational factors such as prison culture, leadership, and policies also influence staff-prisoner dynamics. Positive staff and prisoner relationships are associated with improved prison safety and the overall prison moral and social climate. Addressing problems or challenges related to these factors is essential for building a more humane and effective prison environment.

Keywords: *Staff–Prisoner Relationships, Prison Environment, Prison Life, Procedural Justice, Rehabilitation*

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Introduction

Much of the current literature on prison life pays particular attention to the importance of staff–prisoner relationships within prisons. The moral and social climate of prison is largely shaped by the attitudes and conduct of prison staff (Gonzales et al., 2023; Liebling, 2011), and in today's prison culture, staff have significant influence over prisoners' progress and opportunities within the system (Crewe, 2011). Positive staff–prisoner relationships can contribute to a better quality of life for prisoners (Crewe et al., 2015; Ilijić et al., 2024; Liebling, 2004; Milićević, Ilijić, & Pavićević, 2024). Gonzales et al. (2023) noted that staff who positively view incarcerated people were more likely to create a positive prison social climate. Prisoners attribute their improved behaviour and outlook to feeling valued and respected, fostered by positive relationships with staff and rehabilitation-focused regimes (Bennett & Shuker, 2010). Moreover, positive relationships with prison staff can promote post-traumatic growth in prisoners (Hearn et al., 2021) and are essential for effective treatment (Bobić et al., 2022).

Relationships between staff and prisoners are considered crucial to the overall prison environment and experience or "at the heart of the whole prison system" (Home Office, 1984, para. 16, as cited in Liebling, 2011, p. 485). However, it is important to note that interactions with prisoners can be stressful for prison officers, and violent behaviour from prisoners poses a threat to officers' psychological well-being (Martinez-Iñigo, 2021). Molleman and van der Broek (2014) focused on the relationship between staff work situations, treatment styles, and prisoner perceptions of prison life and explained how a good work situation for staff is a precondition for practising an active, positive and supportive approach towards prisoners.

Exploring the staff–prisoner relationships is valuable, as these relationships are central to the functioning of the prison system, particularly in long-term maximum security establishments (Liebling et al., 1999). Trust is identified as a fundamental quality in the social environment of a prison, and it plays a key role in the daily lives of incarcerated individuals, especially women in open prison environments (Waite, 2022). Moreover, the nature of staff–prisoner relationships can significantly impact rehabilitation outcomes, as seen in the context of sexual offenders (Blagden & Wilson, 2020).

Taking into account the negative consequences of the neoliberal transformation of the prison system (Pavićević et al., 2023), prioritising staff–prisoner relationships is more essential than ever. The focus on economic efficiency at the expense of quality and rehabilitation has highlighted the need for improved interactions between staff and prisoners.

Given the critical role of staff–prisoner relationships in the success of prison systems, as evidenced by extensive research (Beijersbergen et al., 2016; Crewe, 2011; Crewe et al., 2015; Hearn et al., 2021; Khan, 2022; Liebling et al., 1999; Molleman & Van Ginneken, 2015; Waite, 2022), this literature review aims to examine the dynamics of staff–prisoner relationships and their impact on the prison environment, focusing on the key factors that influence these interactions and their potential outcomes. By examining staff–prisoner interactions, we can gain insights into the power structures, social dynamics, and psychological impacts within prisons. This knowledge can inform the development of effective correctional policies and practices that promote positive outcomes for both staff and prisoners.

Methods

A literature search was performed to identify studies on staff–prisoner relationships, their dynamics, and the factors influencing these interactions within correctional settings. Databases searched included Google Scholar, Scopus, and Web of Science, which were chosen for their wide selection of multidisciplinary articles, and search results were expanded using the Connected Papers tool. Keywords included terms related to staff–prisoner relationships, prison dynamics, rehabilitation, procedural justice, and prison cultures, such as *staff–prisoner relationships*, *staff–inmate relationships* and *officer–prisoner relationships* combined with *prison life*, *prison quality of life*, *prison environment*, *correctional institutions*, *rehabilitation*, *prisons*, *power dynamics*, *social dynamics*, *prison safety*, *moral* or *social climate* and *procedural justice*. The date range was not limited.

Eligible studies met the criteria related to focus (studies that examined the dynamics of staff–prisoner relationships and their impact on prison safety, rehabilitation outcomes, the social and moral climate, and the quality of life within prisons), language (articles published in English) and publication type (original, peer-reviewed articles, theses, and dissertations). The search was completed in August 2024.

A total of 65 studies were analysed in the generation of this narrative literature review. The final article selection included systematic reviews, qualitative studies, theoretical works and cross-sectional surveys. The publication dates span from 1961 to 2024.

The study used a qualitative content analysis approach to review and synthesise existing literature on staff-prisoner relationships. This method allowed for a deeper exploration of themes and patterns within the selected studies. The categories for content analysis were identified through an

inductive process, recognising that a single study could contribute to multiple themes.

The results are categorised into seven themes. The first theme includes 15 studies and explores how interactions between staff and prisoners have changed over time, highlighting key factors that shape these relationships and their effects on both parties. Based on eight studies, the second theme examines how fair treatment and perceived legitimacy within the prison system influence prisoner behaviour, trust, and cooperation. The third theme focuses on how various factors, from personal attributes to broader institutional and environmental conditions, including the built environment, affect the quality of staff–prisoner interactions (seven studies). The fourth theme focuses on 13 studies to summarise how staff experiences, such as conflicting roles and burnout, influence their relationships with prisoners and overall job performance. Next, the fifth theme addresses the complexities and potential risks when professional boundaries between staff and prisoners are violated (seven studies). The sixth theme examines how institutional support mechanisms and well-designed programs contribute to positive staff–prisoner dynamics by presenting findings from three studies. Lastly, the seventh theme includes 18 studies and explores how these interactions shape the overall prison environment, including safety, social climate, and the perceived quality of life for both prisoners and staff.

The Evolving Dynamics of Staff–Prisoner Relationships

The nature and dynamics of the relationship between prisoners and prison staff can significantly impact their overall experience while incarcerated. Establishing a humane environment in prison is crucial; effective relationships can enhance security and order, as noted in the historical context of high-security prisons (Liebling, 2022). Positive staff–prisoner interactions can help reduce negative perceptions and adversarial attitudes that often exist within prisons, with trust and respect as essential characteristics of this relationship (Crewe et al., 2015). When relationships deteriorate, it can lead to exploitation of power by either staff or prisoners (Liebling, 2022). The quality of the interaction between prisoners and the staff who supervise them is important for prisoners' well-being in prison (Ilijić et al., 2024) and adaptation to prison life (Logan et al., 2022). Fair treatment from prison staff can improve relationships with prisoners, reduce social distance within a prison environment (Meško & Hacin, 2019), and contribute to rehabilitation goals (Bennett & Shuker, 2010). The quality of interactions between staff and prisoners significantly contributes to the

well-being and development of prisoners. Specifically, positive interactions between staff and prisoners are strongly associated with personal growth, a sense of autonomy, self-determination, enhanced overall well-being, and reduced distress levels (Ilijić et al., 2024).

The studies generally utilised established theoretical models to analyse staff–prisoner relationship formation, namely importation, deportation and normative models. The Importation Model, as presented by Irwin and Cressey (1962), suggests that prisoners bring their pre-prison attitudes and behaviours into the prison environment. On the other hand, the Deprivation Theory, first described in 1958 by Sykes and Messinger (Sykes, 2007), argues that the deprivations experienced in prison, such as loss of freedom and autonomy, lead to negative attitudes towards correctional officers. Studies also refer to the normative model because it proposes that prisoners' attitudes towards correctional officers and their behaviour in prison are influenced by the norms and values of the prison environment (Felix et al., 2023). These theoretical frameworks lay the groundwork for understanding the staff–prisoner relationship and help us explore how pre-prison experiences and individual characteristics, institutional conditions and deprivations and prison culture and social norms shape the relationship between inmates and prison staff in a prison setting.

A broader perspective on relationships between prison staff and prisoners has been presented by Ben-David (1992) who challenged Goffman's (1961) traditional description of these relationships as fixed and hostile in total institutions. The study suggests that staff–prisoner relationships are not always fixed or hostile, as Goffman described. Instead, they can vary significantly, ranging from punitive to integrative, based on factors like staff perception of inmates in prison, relationship orientation, relationship model, and social distance. Following this line of research, Ben-David and Silfen (1994) explored the differences in perceptions between staff members and prison inmates regarding the ideal qualities of their relationships. In general, staff members valued involvement, support, prisoner autonomy, an anti-authoritarian position, and friendly, informal relationships with low levels of control. On the other hand, prisoners preferred a more authoritarian style of relationship, with clear rules and expectations, leading the authors to conclude that prisoners had relied on a Goffmanian style of relationship, with definite boundaries and a power imbalance as the main characteristics.

Furthermore, staff–prisoner relationships involve a significant power imbalance, with staff holding the power "in reserve" (Sykes, 1958, as cited in Liebling et al., 1999, p. 72). The right balance of respect, fairness, and appropriate use of authority is the main characteristic of this relationship (Crewe et al., 2015; Liebling et al., 2010). Some of the responsibilities of

prison staff include peacekeeping and the use of discretion, which are both crucial for maintaining order and security. In general, peacekeeping involves preventing conflict and maintaining control, while discretion allows officers to make informed decisions within guidelines, using judgment and flexibility to address varying situations and individuals (Liebling et al., 1999).

Surveys such as that conducted by (Crewe et al., 2015) have shown that while private-sector prisons may have made efforts to improve staff–prisoner relationships, challenges related to staff professionalism remain. For instance, prisoners in private prisons are more likely to report positive interactions with staff, including respect, listening, and less judgment, yet some prisoners experience difficulties with staff knowledge and responsiveness. Further, private prisons often emphasise a service-oriented approach rather than solely punishment, whereas high workloads, understaffing and administrative inefficiencies can hinder staff effectiveness and responsiveness in public-sector prisons (Crewe et al., 2015).

The Role of Procedural Justice and Perceived Legitimacy

One of the primary factors affecting staff–prisoner relationships is the concept of procedural justice. Research indicates that when prison staff engage with prisoners in a fair and respectful manner (respectful treatment), it enhances the perceived legitimacy of their authority. This perception is critical, as a lack of fairness in interactions can lead to negative outcomes such as conflict, noncompliance, and increased misconduct among prisoners (Felix et al., 2023; Ryan & Bergin, 2022). For instance, Felix et al. (2023) examined the relationship between prisoners and correctional officers in Taiwanese prisons, focusing on how prisoners form attitudes towards staff. As reported, over 60% of prisoners reported trusting correctional officers, which was influenced by factors such as social support from staff, procedural justice, distributive justice, age, and gender. Ryan and Bergin (2022) explored the relationship between procedural justice, legitimacy, and normative compliance in prison settings. They argued that perceived unfairness can significantly undermine the legitimacy of prison officers, which can affect normative compliance among prisoners in turn, thereby exacerbating tensions within the facility (Ryan & Bergin, 2022). Furthermore, the way staff treat prisoners can influence the social distance that prisoners maintain from them, complicating compliance and cooperation (Felix et al., 2023; Ryan & Bergin, 2022). This is echoed by findings from Steiner and Wooldredge (2018), who assert that prisons where officers

exercise power with fairness experience less prisoner rule-breaking and violence.

Bickers et al. (2019) focused on the fairness and transparency of the processes involved in risk assessments and interactions with offender supervisors and used a semi-structured interview approach to gather prisoners' perceptions. As presented, prisoners reported a very limited degree of procedural justice in their interactions with offender supervisors and that lack of procedural justice negatively impacted their relationships with these staff members and their overall prison experience.

Meško and Hacin (2019) conducted research on social distance between prisoners and prison staff in Slovenian prisons. Results revealed perceptions of procedural justice as the predominant factor influencing social distance. The presence of a violent subculture can have a significant influence on social distance, particularly in larger prisons with more severe regimes. Age, education and perceptions of the legitimacy of prison staff also influence social distance. It is important to note that results also indicated that social distance is not constant nor static and can change over time due to various factors, such as changes in a prison environment and the emergence of new subcultures (Meško & Hacin, 2019).

Additionally, the prevailing prison culture, which may include subcultures among prisoners and staff, can influence behaviour and attitudes on both sides. Hacin and Meško (2018) examined the relationship between prisoners' perceptions of the legitimacy of prison staff and their compliance with prison rules and used qualitative data from 193 Slovenian prisoners. Overall, while most prisoners had positive views of prison staff and reported having relatively good relationships with them, individual experiences and relationships varied. The quality of interactions between prisoners and staff was influenced by factors such as prisoner behaviour, staff attitude, and adherence to rules. While informal relationships and deviations from rules sometimes existed between prisoners and staff, there was a general understanding of boundaries that neither group crossed. However, prisoners expressed negative opinions about specialised workers, perceiving them as incompetent and manipulative (Hacin & Meško, 2018). They found the declining influence of prison subculture in certain contexts on the quality of relations between prison workers and prisoners, suggesting that changes in institutional culture can have far-reaching implications. For example, the presence of a hierarchy among prisoners, with senior prisoners holding more power, can create a challenging environment for staff to manage. Their findings indicate that prison staff may be aware of the hierarchical structure and the power dynamics among prisoners but often tolerate it until it reaches a critical point (Hacin & Meško, 2018).

The legitimacy of prison staff is shaped by their self-perception and their relationships with colleagues, implying that a supportive work environment, characterised by trust, support, and fair treatment from supervisors, fosters a sense of legitimacy that can positively impact interactions with prisoners (Hacin et al., 2019; Liebling, 2004). Thus, the interpersonal dynamics among staff can significantly influence their effectiveness in managing prisoner behaviour.

Understanding the Influence of Individual, Institutional, Organisational and Situational Factors

Gadon et al. (2006) examined the impact of situational factors on institutional violence in prisons and psychiatric settings. The authors systematically reviewed previous research that measured the relationship between physical, verbal, and sexual violence and various situational factors. They found that environmental factors such as overcrowding and inadequate staffing contribute to institutional violence and tensions between staff and prisoners, but methodological issues limit the confidence in these results. Still, these findings indicate that it is important to consider situational factors in addition to individual factors when trying to manage institutional violence (Gadon et al., 2006). Furthermore, when addressing the issue of prisoner violence in correctional institutions, it should be taken into account that prisoner–prisoner and prisoner–staff violence are two distinct phenomena (Patrick, 1998). While prisoner–prisoner violence is related to structural and interpersonal aspects of the prison environment, prisoner–staff violence is related to prisoners' involvement in social relationships with other prisoners and their perception of correctional staff as a threat (Patrick, 1998).

On the other hand, Logan et al. (2022) explored the factors that influence prisoners' negative perceptions of correctional officers. They included 1613 recently released offenders and focused on two main areas: prisoner or individual characteristics (demographic, criminal history factors) and institutional characteristics (victimisation, treatment participation, religious participation, social support). Overall, they found that both individual and institutional factors, that is, imported characteristics and deprivation measures, contributed to prisoners' negative perceptions of correctional officers. More precisely, younger prisoners, minority prisoners, prisoners with higher levels of education, prisoners serving longer prison sentences and those with a prior criminal record tend to have more negative perceptions of correctional staff. Furthermore, prisoners who have experienced direct victimisation, received less social support, or participated in treatment

programs are also more likely to perceive correctional officers as coercive (Logan et al., 2022).

Furthermore, the orientation of correctional officers, in terms of whether they adopt a custodial or human service approach, also significantly influences staff–prisoner relationships. In general, the orientation of correctional officers encompasses their beliefs, values, and attitudes regarding the role of prisons, the treatment of prisoners, and their own responsibilities as correctional officers. Correctional officers with a custodial orientation prioritise security, control, and punishment, whereas those officers with a human service orientation prioritise rehabilitation, support, and treatment. Based on qualitative fieldwork in one men's and one women's prison, Tait (2011) argues that personal and institutional factors shape the quality of care that prison officers provide, including length of experience, gender, work environment, and experience of trauma. As Tait (2011) suggests, officers who prioritise care and rehabilitation tend to foster more positive interactions with prisoners, which can reduce the derivational nature of the prison environment. On the other hand, the use of excessive force or threats to enforce rules and maintain order can lead to resistance and defiance from prisoners. This approach can have negative consequences, such as increased tension and conflict and Reduced trust and cooperation (Steiner & Wooldredge, 2018).

The prison environment itself, including its architecture and culture, also impacts staff–prisoner dynamics. In other words, the design and layout of prison buildings can significantly influence staff–prisoner relationships. Studies have shown that prisoners in older units or those with more double cells tend to have less positive perceptions of their interactions with staff (Beijersbergen et al., 2016). For example, prisoners in panopticon layouts (where officers can observe all prisoners from a central location) and those housed in older units and units with more double cells were less positive about their relationships with officers than those in other layouts (Beijersbergen et al., 2016).

The Impact of Role Conflict, Job Satisfaction, and Burnout

Early examples of research into organisational aspect of prison life that can shape staff–prisoner relationships include Hepburn and Albonetti's (1980) exploration of role conflict among prison staff. Their study found that the conflicting goals of treatment and custody within correctional institutions often result in ambiguous role expectations and role conflict among staff. Role conflict can contribute to negative attitudes, such as cynicism and punitiveness towards prisoners, which, in turn, can be influenced by higher role conflict and

increased job demand (Hepburn & Albonetti, 1980; Poole & Regoli, 1980; Williams, 1983). More importantly, Hepburn and Albonetti (1980) demonstrated that this conflict is more related to the organisational goals of the institution than to the specific roles of the staff. Later, Lambert and Paoline (2008) reinforced the significance of job stress, job satisfaction, and organisational commitment among correctional staff. Their research revealed that job stress inversely affects job satisfaction, while job satisfaction positively correlates with organisational commitment. Building upon this, Lambert et al. (2009) confirmed the importance of creating a positive and supportive work environment for correctional staff. Accordingly, supervisory consideration, job variety in terms of having a varied job with different tasks and responsibilities, and perceptions of training positively affect job satisfaction and organisational commitment among correctional staff (Lambert et al., 2009). On the other hand, officers who perceive their coworkers engaging in boundary violations with prisoners are more likely to tolerate the mistreatment of prisoners, indicating that role conflicts and boundary issues can deepen negative attitudes towards prisoners (Worley et al., 2021). It is interesting to note that while emotional dissonance, perceived organisational fairness, and feedback regarding job performance are also significant organisational issues that affect staff stress levels of correctional staff and their relationships with prisoners, the percentage of time spent in contact with prisoners is negatively correlated with work stress (Tewksbury & Higgins, 2006). In other words, contact with prisoners can actually reduce work stress for correctional staff and the way they perceive and manage these interactions may be important (Tewksbury & Higgins, 2006). At the same time, the quality of relationships with superiors and colleagues significantly affects the level of depersonalisation, a dimension of burnout, among prison staff (Pane, 2016). Poor communication and cooperation within the organisation lead to higher levels of emotional exhaustion and depersonalisation (Pane, 2016), which could, in return, negatively impact staff–prisoner interactions. Depersonalised prison staff may be less effective in achieving the goals of rehabilitation and teaching positive behaviour to prisoners (Higgins et al., 2022; Pane, 2016). As has been argued elsewhere, burnout, particularly the depersonalisation dimension, leads to a dehumanised approach towards prisoners, reducing the effectiveness of rehabilitation efforts and negatively impacting prisoner–staff relationships. Specifically, studies suggest that burnout of prison staff negatively affects their relationship with prisoners, leading to decreased ability to recognise and intervene in critical situations (Piccoli et al., 2015), increased emotional exhaustion (Boudoukha et al., 2011), and negative consequences for both officers and prisoners (Liu et al., 2022). Recently, Walters (2022)

demonstrated that a lack of support from other staff members is a stronger source of stress for correctional officers than interactions with prisoners or other prisoner-related stressors. The perceived support from prison officials has a particularly strong effect on correctional officer stress.

Relational Ambiguities and Boundary Violations

As previous works have noticed, relational ambiguities and power dynamics within correctional facilities can significantly shape staff–prisoner relationships. Relational ambiguities in staff–prisoner relationships can arise from unclear boundaries, mixed messages, and inconsistencies in how staff treat prisoners. In particular, prison officers often feel their authority is undermined by the rehabilitative aspects of their job (Rowe, 2016). These ambiguities can contribute to confusion, misunderstandings, and strained relationships within the prison environment. Furthermore, the use of "soft power" and neo-paternalism in prisons can hinder the development of closer relationships between prisoners and uniformed staff, affecting the prison's interior legitimacy (Crewe, 2011). Women's prisons have distinct characteristics that challenge traditional models of penal order, authority, and legitimacy. In women's prisons, the relational dynamics are characterised by blurred boundaries, infantilisation, pettiness, inconsistency, and favouritism (Crewe et al., 2023). These characteristics are influenced by the powerlessness and vulnerability of female prisoners, as well as their past experiences of abuse and trauma (Crewe et al., 2023).

Regarding the relationship between staff–prisoner boundary violations and contraband levels, recent evidence suggests that staff involvement in contraband smuggling most usually originates from three key motivations (Peterson & Kim, 2024). Besides financial gains and a lack of oversight and accountability within prisons, a special focus is on inappropriate staff–prisoner relationships. In other words, personal connections between staff and prisoners can create opportunities for boundary violations and facilitate the smuggling of contraband. An earlier examination of professional boundaries by Cooke et al. (2019) reveals that boundary violations between corrections officers and prisoners can arise from complex interpersonal dynamics within prison environments. The study analysed several high-profile cases to identify factors contributing to these violations, such as the power imbalance between prison officers and prisoners and the development of special relationships. As summarized, these relationships could lead to blackmail, contraband introduction, and other illegal activities. Cooke et al. (2019) also highlighted the importance of professionalism and ethical behaviour in correctional settings. They concluded that understanding these

dynamics is crucial for preventing misconduct while fostering healthy interactions that can benefit both officers and prisoners, drawing parallels to the doctor–patient relationship (Cooke et al., 2019).

From the perspective of the prisoners involved in such relationships, the benefits of manipulating staff can outweigh the risks, especially when prisoners feel powerless or exploited within the prison system (Worley et al., 2010). However, prisoners can also have the role of informants in detecting and reporting inappropriate relationships between prisoners and guards (Worley, 2011). As explained, prisoners may be willing to violate the subcultural norm of silence within the prison environment if they believe that other prisoners are behaving inappropriately.

The Role of Staff Support and Program Design

Kendall et al. (2018) conducted a systematic review of qualitative evaluations of community re-entry programs designed to help recently released adult prison inmates with substance use issues or mental health disorders. The authors reviewed 2373 potential papers and included eight in their analysis. They identified key social and structural factors that contribute to the success of these programs. The findings suggest that community re-entry programs should prioritise the development of strong interpersonal skills for caseworkers in prisons, provide access to social support and housing, and ensure continuity of care and better communication between staff and prisoners during reintegration into society (Kendall et al., 2018).

In a recent study by Little et al. (2023), the acceptability of depot buprenorphine treatment among health and prison staff was assessed. Through focus groups with health and correctional staff, the study indicated strong support for this drug treatment option among both groups due to its potential to enhance patient care while improving safety within prison settings. More precisely, key benefits identified include increased patient safety, improved health outcomes, expanded treatment coverage, and more efficient service delivery. Such insights reflect the implication of staff support in implementing new treatment programs (Little et al., 2023).

The study, designed and conducted as a systematic review of the experiences, perceptions, and attitudes of prison staff regarding self-harm among adult prisoners, found that staff frequently witnessed self-harm and identified various risk factors and causes (Hewson et al., 2022). Negative perceptions of self-harm as manipulative or attention-seeking were associated with hostility towards prisoners and lower quality of care. Challenges in preventing and managing self-harm included insufficient training, poor staff confidence, and limited resources. This systematic review

involved a substantial sample size (6389 participants from 32 studies) across five countries but noted that most included studies were rated as moderate to poor quality. Overall, findings underscore the need for better training for staff to enhance their understanding of prisoners' mental health issues and improve interpersonal relationships (Hewson et al., 2022).

Understanding the Impact on Prison Climate and Quality of Life

Current evidence suggests that the staff–prisoner relationship has a mediating role between cell sharing and the quality of prison life (Molleman & Van Ginneken, 2015). According to the findings of this study conducted in Dutch prisons, cell sharing is associated with lower perceived prison quality, partially due to its negative impact on staff–prisoner relationships, suggesting that improving staff–prisoner relationships could be one of the strategies to mitigate the negative effects of cell sharing.

Van Ginneken et al. (2020) aimed to understand how different aspects of prison officers' work climate are related to how prisoners perceive the prison climate in the Netherlands. As reported, a higher workload for prison officers was associated with a more negative prison climate as perceived by inmates, while positive relationships and support among prison officers were linked to a more positive prison climate. Overall, the study found that the perceptions of prison officers and prisoners are connected and that investing in a positive work climate for prison officers is important for both staff well-being and the overall prison environment. Conversely, a negative work climate for prison officers (e.g., excessive workload, and lack of support) can contribute to a more negative prison climate for inmates, potentially leading to increased tension, conflict, and decreased prisoner well-being (Van Ginneken et al., 2020).

Staff–prisoner relationships are valued positively by female convicts in Serbian prisons, and these relationships significantly contribute to their overall well-being and positive experiences within the prison environment. Female prisoners prioritise respect, humanity, and support from staff, and perceive these qualities as essential for a positive prison experience. Additionally, they appreciate a fair and consistent approach from prison staff, which contributes to a sense of legitimacy and trust (Batrićević et al., 2023). Preliminary work on the factors influencing the quality of prison life among Serbian prisoners, using the Serbian version of the *Measuring the Quality of Prison Life* (MQPL) survey (Liebling et al., 2012; Međedović et al., 2024; Milićević, Ilijić, & Vujičić, 2024) has shown that staff–prisoner relationships are its most influential predictor. Accordingly,

fostering trust, fairness, and support between staff and prisoners is important for enhancing the quality of prison life (Milićević, Ilijić, & Pavićević, 2024). Prisoners also perceive their circumstances and prison conditions more positively when staff have a supportive orientation towards them (Molleman & Leeuw, 2012).

Recently, considerable evidence has accumulated to show that specific thresholds for MQPL dimensions related to safety and security can be identified (Auty & Liebling, 2024). Prisons with staff–prisoner relationship scores below 3.05, on a scale from 1 to 5, were significantly more likely to experience various forms of violence, including assaults, self-harm, and self-inflicted deaths. In other words, prioritising the quality of prison life, particularly staff–prisoner relationships, is important to create a safer and more secure prison environment.

Research indicates that positive interactions between staff and prisoners can facilitate the rehabilitation process. For instance, Dugdale and Hean (2021) highlight that in Norway, the shift in prison officer roles from mere guards to facilitators of rehabilitation has been instrumental in promoting humane treatment and successful reintegration of prisoners into society. Professional development for prison staff requires careful and ongoing consideration, as inadequate training can undermine both staff effectiveness and prisoner well-being (Dugdale & Hean, 2021). Crewe et al. (2011) noted that the attitudes and behaviours of prison staff affect the quality of life for prisoners and that a supportive staff culture can lead to better outcomes for both parties. Conversely, punitive or rigid institutional philosophies or perspectives often disregard the idea of rehabilitation or treating prisoners and their families with respect, which can exacerbate tensions and hinder the development of constructive relationships (Hart-Johnson & Johnson, 2020). In addition, the psychological impact of staff–prisoner interactions cannot be overlooked. Negative interactions can lead to a cycle of mistrust and hostility, which can further deteriorate the relationship between staff and prisoners (Gredecki & Ireland, 2012; Hart-Johnson & Johnson, 2020).

Moreover, the quality of staff–prisoner relationships is closely linked to prison safety and the overall social climate within correctional facilities. Johnston and Holt (2021) found that representative bureaucracy among prison staff correlates with decreased violence, suggesting that when staff reflect the demographics of the prison population, it can lead to improved relationships and reduced conflict. Similarly, Gonzales et al. (2023) argue that the beliefs of non-uniformed staff about incarcerated individuals significantly influence the prison's social climate, affecting perceptions of safety and well-being among staff and prisoners. Prisoners generally look

for constructive and positive relationships with staff, which are characterised by support, affirmation, fairness, and respect, and such relationships have been linked to better outcomes in rehabilitation programs, as prisoners are more likely to engage in constructive activities when they feel respected and valued by staff (Bennett & Shuker, 2010; Blagden & Wilson, 2020; Crewe, 2011; Crewe et al., 2011).

Tait (2011) suggests that active listening and responsiveness from prison officers can help reduce feelings of frustration and powerlessness among prisoners. This, in turn, can contribute to a more stable and secure prison environment. Similarly, Ross et al. (2011) noted that high staff involvement in treatment programs contributed to better relationships between staff and prisoners, which in turn fostered a more positive prison climate. Similarly, Nylander et al. (2021) found a positive correlation between high staff involvement in treatment programs and improved staff–prisoner relationships, which ultimately leads to a more positive prison climate and confirms the importance of active participation and engagement from staff in treatment wings.

Limitations

The reviewed studies provide valuable insights into staff–prisoner relationships but are limited by their focus on specific contexts (e.g., high-security facilities, Western countries), over-reliance on quantitative data, and biases from self-reporting. Additionally, the predominance of English-language research leaves a gap in understanding these dynamics in non-Western settings.

However, the present study has some limitations to be considered. The review is limited by its focus on English-language studies and lacks longitudinal data to track evolving staff–prisoner relationships. Remaining challenges include addressing cultural and regional differences in staff–prisoner relationships, overcoming structural inequalities, and enhancing staff training for rehabilitative approaches. Future research should focus on non-English literature, longitudinal studies, qualitative methods, and broader theoretical frameworks to gain deeper insights and develop more inclusive prison reform strategies.

Conclusion

Contradictions arise when considering the influence of interpersonal styles of prison officers on their ability to work with prisoners (Gredecki & Ireland, 2012), and the impact of prison architecture on prisoners'

perceptions of their relationships with officers (Beijersbergen et al., 2016). Additionally, the quality of prison life and staff–prisoner relationships are negatively affected by cell sharing (Molleman & Van Ginneken, 2015). The potential for boundary violations between correctional employees and prisoners further complicates these relationships, with inmate informants playing a role in detecting inappropriate relationships (Cooke et al., 2019; Peterson & Kim, 2024; Worley, 2011; Worley et al., 2010, 2021). The distinction between prisoner–prisoner and prisoner–staff violence also underscores the complexity of these interactions (Patrick, 1998). Lastly, correctional officer stress is more strongly correlated with weak staff support than with prisoner-related stressors, highlighting the importance of staff relationships in the prison context (Walters, 2022).

Overall, there is a growing body of literature that recognises the importance of the dynamics of staff–prisoner relationships for the effective functioning of correctional institutions. By narratively reviewing a total of 65 studies, the paper aimed to synthesise existing knowledge and identify key factors influencing staff–prisoner interactions and their potential outcomes. As presented, these relationships significantly influence the prison environment, impacting factors such as order, legitimacy, and the well-being of staff and prisoners. To summarise, positive staff–prisoner interactions can foster trust, respect, and compliance among prisoners, leading to improved rehabilitation outcomes and reduced defiance. Conversely, negative relationships can contribute to tension, conflict, and decreased prisoner well-being.

The dynamics of staff–prisoner relationships in correctional facilities are complex and closely related to various psychological, situational, and organisational factors. Namely, these relationships are shaped by staff perceptions of prisoners, for instance, regarding self-harm behaviours, as well as institutional factors such as the physical layout of the prison and the prevailing prison culture. To understand these dynamics, the individual characteristics of prisoners, such as age, education, and criminal history, alongside the organisational environment, including role conflicts, job satisfaction, and communication within the institution, must be considered. Ultimately, the quality of staff–prisoner relationships is associated with perceived prison quality and its moral and social climate.

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Review Paper

Right to Access Health Care in Prisons: International Standards and Practice[1]

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All rights are maintained by individuals deprived of their liberty unless they are legally revoked by the verdict that sentences them or orders their detention. Nevertheless, the provision of health care in prisons is not feasible in the same way, due to the prevalence of certain health issues in prisons and specific inherent constraints. Even though international documents governing the treatment of prisoners declare equivalence of health care, which implies that prisoners must have access to the same levels of health care as the general population and must receive the same level of care as the community, the health of prisoners is often inferior to that of the general population. In the context of international bodies that make decisions on individual complaints, access to health care is achieved through civil and political rights, rather than economic and social rights. Regarding the right of prisoners to access health care, the European Court of Human Rights maintains the most comprehensive practice, and human rights violations are addressed in accordance with the unique circumstances of each case, in addition to a few general principles. However, the European Court of Human Rights allows states to exercise some discretion concerning the principle of equivalence of health care. The World Health Organization's efforts to collect data on critical health indicators in prisons and develop evidence-based health care policies could lead to improved prisoner health.

Keywords: *Health care, Prison, right to health, European Court of Human Rights*

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Introduction

The issue of health care access is primarily concerned with the rights of marginalized groups, including migrants, asylum seekers, national minorities, individuals with mental health issues, and those who are incarcerated. Regrettably, it is a common occurrence that imprisoned individuals lack sufficient access to health care. Individuals deprived of their liberty maintain all their rights unless they are legally taken away by the verdict that sentences them or orders their detention (Council of Europe Committee of Ministers, 2006, par. 2). However, health care in correctional facilities is not attainable in the same manner, owing to specific inherent constraints, and due to the prevalence of certain health issues in prisons. The principle of equality when accessing health services is the least controversial element of the right to health care, and it can be viewed as a fundamental dimension of the right to access health care in general. In addition to safeguarding the individual human rights and interests of prisoners, the provision of appropriate health care also serves a more general purpose: to facilitate their re-socialization and increase their likelihood of reintegrating into society as active members (Ilijić, & Batrićević, 2015, p. 448).

The treatment of prisoners is significantly influenced by the United Nations Standard Minimum Rules for the Treatment of Prisoners (hereinafter: Mandela Rules) at the universal level and the European Prison Rules (hereinafter: EPR) at the European level, which are dedicated to the preservation of prisoner rights. The health care equivalence principle is declared in both documents. Nevertheless, there are unresolved issues regarding the delivery of health care in prison, since the health data available on prisoners suggests that the quality of health care and health outcomes are suboptimal and do not align with the health care provided to the general population (Jotterand & Wangmo, 2014, p. 10). The European Court of Human Rights (hereinafter: ECtHR) also observed that "medical assistance available in prison hospitals may not always be at the same level as in the best medical institutions for the general public". However, the State is obligated to ensure that the health and well-being of detainees are adequately protected, and it bears a special responsibility for this matter, as the deprivation of liberty places prisoners in a dependent position, with limited options compared to the general public.

World Health Organization (hereinafter: WHO) prioritizes the investment in health records by prison health systems to facilitate the implementation of evidence-based policies. Status report on prison health in the WHO European Region 2022, shows inequalities still exist across Europe

concerning equitable access to health care as incarcerated people continue to have a higher prevalence of disease and worse outcomes when compared to the general population. It acknowledges the deficiencies in the ratio between the size of the prison health workforce and the number of prisoners, particularly psychiatrists. It emphasizes the need for appropriate treatment of mental health disorders, more effective suicide prevention practices, and a comprehensive package of prevention measures, particularly for common disorders that affect the prison population. Additionally, it recognizes that immunization for vaccine-preventable diseases should be offered, HIV PEP should be included in the response to HIV in prisons, tuberculosis continues to be a health concern in prisons, and also screening and referral for breast, cervical, and colorectal cancer should be offered. Finally, it emphasizes the importance of health ministries' involvement in the delivery of health care in prisons (WHO Regional office for Europe, 2023, p. 67-70). Health policy in prisons should be integrated into, and comparable with national health policy, and must encompass the health-related particularities of prisons (Abbing, 2013, p. 18).

Research conducted in the English prison estate indicates some of the challenges related to accessing secondary care, and prisoners experience security concerns that override their health care requirements and challenges associated with the prison officer's role in accompanying them to medical consultations. The prison regime and transport requirements have delayed access, particularly the limited number of prison officers available to act as escorts. In addition, patient autonomy is restricted since they cannot book their appointments, or choose the hospital where they will receive treatment or transport themselves, and the right to information is lacking (Edge et al., 2020, pp. 3-6).

Relevant international instruments

Discussions on health and human rights often refer to a differentiation between 'civil and political rights' that are considered to have greater legal significance and can be protected from state interference, and 'economic and social rights' that are seen as aspirations that require the state to provide protection and assistance, and which may involve the allocation of resources (Hervey & McHale, 2015, p. 158). Nevertheless, the justiciability of economic and social rights is no longer significantly contested, and there is a growing recognition of the necessity for judges to give full meaning to the realization of these rights (Yusuf, 2012, p. 754). It is important to consider that the right to access health care is related to several civil and

political rights, including the right to life, the prohibition of torture and inhumane or degrading treatment or punishment, the right to personal integrity, the right to privacy, and the prohibition of discrimination. The fulfillment of the right to access health care is also realized, to a certain degree, through these well-established and detailed rights and practices.

The right to health encompasses multiple rights, and the concept of health is undoubtedly broader than the concept of health care. Two fundamental components of the right to health are the right to health care and the underlying determinants of health. Health care refers to the provision of services that encompass diagnostic, preventative, therapeutic, and rehabilitative interventions. These services are aimed at either maintaining or enhancing an individual's overall health or alleviating their suffering. Also, health care must adhere to an appropriate level of quality following advancements in science and undergo continuous quality assessment.[3] Underlying determinants of health encompass a broad range of factors that foster the conditions necessary for individuals to lead a healthy life, including safe food, nutrition, and housing, as well as potable water, a healthy environment, adequate sanitation, health-related education, and information (*Ssenyonjo, 2009, p. 324-328)*. It could be argued that the right to health care is more appropriately categorized, while these determinants should be placed within the right to an adequate standard of living, since "it does not take very much to bring any aspect of social life into connection to right to health" (De Groot, 2005, p. 55). The type of health care that individuals should have access to and the extent to which they should have access is impossible to determine at a very detailed level, and the scope of realization of this right is contingent upon the specific circumstances and health requirements of a given state, as well as its financial resources (San Giorgi, 2012, p. 20).

The Universal Declaration of Human Rights (UDHR) in Article 25 (1) protects the right of everyone to an adequate standard of living, including medical care. Article 12 (1) of the International *Covenant* on *Economic, Social, and Cultural Rights* (ICESCR) entitles every individual to the enjoyment of the highest attainable standard of physical and mental health. General Comment No. 14 of the UN Committee on Economic, Social, and Cultural Rights (CESCR) provides an additional explanation of the principles outlined in Article 12 of the ICESCR. The right to health consists of four key, interconnected components: availability, accessibility, acceptability, and

[3] Explanatory Report to the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, par. 24.

quality. According to the CESCR, accessibility essentially means that health facilities, goods, and services must be available to all individuals without discrimination, especially the most vulnerable or marginalized sections of the population (CESCR, 2000, par. 12). Hence, it is imperative that access to health care remains unobstructed by incarceration, and it essentially entails the absence of equality when seeking access. In most cases, other relevant universal documents protect the right to the highest possible standard of health.[4]

At the European level, a more reserved approach is implemented. Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine (hereinafter: Biomedicine Convention) protects equitable access to health care (Article 3) "Parties, taking into account health needs and available resources, shall take appropriate measures with a view to providing, within their jurisdiction, equitable access to health care of appropriate quality".[5] "Equitable" is defined as the absence of unjustified discrimination, as stated in the Explanatory Report to the Biomedicine Convention. While not identical to absolute equality, equitable access implies the effective acquisition of a satisfactory level of care. Parties to the Convention must take appropriate steps to attain this aim within the limits of available resources. Also, this provision aims to encourage the State to prioritize fair access to health care as part of its social policy, rather than creating an individual right that can be used in legal proceedings against the State.[6] The basis for this interpretation stems from the above mentioned position that social rights, unlike civil and political rights, and are ineligible

[4] When it comes to universal instruments for the protection of human rights, a completely unified approach to the protection of the right to health has not been adopted. Some protect the right to healthcare (Convention on the Elimination of All Forms of Discrimination Against Women Article 12 (1)) while the majority protects the right to the highest possible standard of health (Convention on the Rights of the Child, Article 24 (1); Convention on the Rights of Persons with Disabilities, Article 25 (d); Convention on the Rights of Persons with Disabilities, Article 25 (d) Universal Declaration on Bioethics and Human Rights, Article 14), or in one case the right to public health, medical care, social security, and social services (International Convention on the Elimination of All Forms of Racial Discrimination, Article 5 (d)).

[5] Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, Article 3.

[6] Explanatory Report to the Convention for the protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine: Convention on Human Rights and Biomedicine, par. 25-26.

for court proceedings since they are still undeveloped and vague (Alston, 1999, p. 679). European Social Charter (revised), in Article 11 protects "The right to protection of health"[7]. At the EU level, Article 35 of the EU Charter of Fundamental Rights recognizes the right to health care rather than the right to health. Namely, "everyone has the right to access preventive health care and the right to treatment under the conditions established by domestic laws and practice"[8].

Although not legally binding, the Mandela Rules at the universal level and the EPR at the European level have a substantial impact on the treatment of prisoners. Mandela's rules declare equivalence of health care, which implies that prisoners must enjoy the same levels of health care that are provided in the community, as well as access to necessary health care services (UN General Assembly, 2016, Rule 24). EPR states that: *"Prisoners shall have access to the health services available in the country without discrimination on the grounds of their legal situation*" (Council of Europe Committee of Ministers, 2006, par. 40.3). European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment Standards (hereinafter: CPT) also declares equivalence of health care (CPT, 2002, par. 38). However, it is important to note that the level of health care provided in prisons should not just be the same as in the community, but should meet even higher standards. Prisons are widely recognized as having a greater propensity for transmitting infectious diseases. Also, there is a heightened prevalence of individuals belonging to underprivileged groups that suffer from inadequate health, particularly unaddressed chronic conditions. In addition, there is a larger population of individuals with mental health issues, whose condition frequently worsens due to being deprived of their freedom (WHO Regional Office for Europe, 2014, p. 8). Consequently, it is imperative to transcend the notion of comparable standards for health care and instead advocate for standards that fulfill equivalent objectives (Lines, 2006, p. 269-280). The health care system in numerous countries is often hampered by a variety of issues that affect the general population. However, persons deprived of liberty are in a dependent position, which is why states have a special responsibility to provide health care to prisoners.

[7] This right includes the Parties obligation to remove as far as possible the causes of ill-health; to provide advisory and educational facilities for the promotion of health and the encouragement of individual responsibility in matters of health and to prevent as far as possible epidemic, endemic and other diseases, as well as accidents Council of Europe,

[8] Charter of Fundamental Rights of the European Union, Article 35.

The World Health Organization (WHO) is also committed to improving the health of imprisoned individuals by issuing guidelines that are derived from an evaluation of the quality and effectiveness of prison health services that are provided on a global scale (WHO, Europe). The WHO Regional Office for Europe also recently established the Health in Prisons European Database (HIPED) which collects data on critical health indicators in prisons in Europe.

Basic rules governing access to health care in prisons

Attainment of health care in penitentiary institutions is not always feasible in the same fashion as in the general public, due to certain distinct limitations. For example, in the community, a patient's appointment with a doctor indicates consent for diagnosis and treatment. Implied consent cannot be presumed in a prison setting since prisoners typically cannot choose their doctor, and the medical examination upon admission is mandated by the prison authorities rather than requested by the patient; hence, implied consent can be assumed only if it has been made clear to the patient that the physician is obliged to offer the admission examination (Pont & Harding, 2019, p. 19). When it is impossible to avoid deviating from the principle of equivalence of care, due to limitations related to restrictions of liberty, the inclination should consistently exceed the standards of the community rather than failing to meet them (Niveau, 2007, p. 612). Also, health care personnel frequently exhibit dual loyalty in prisons, as they are often loyal to the prison administration or the state authority in addition to their patients. Health care personnel employed by the prison administration may be susceptible to pressures to prioritize security over patient care, and in order to prevent the emergence of dual loyalty, the prison administration ought to delegate responsibility for the provision of health care to the public health authorities (Pont et al., 2018, p. 472-476).

The Mandela Rules and the EPR place a significant emphasis on the provision of health care in prisons. They regulate the organization of prison health care, as well as the qualifications and responsibilities of medical and health care personnel. The provision of health care services in prison is addressed in Mandela Rules articles 24-35, 46, and 109-110, and it is also addressed in EPR paragraphs 12 (1-2) and 39-48. Aside from the previously mentioned principle of equivalence of health care, it is stated that all necessary medical, surgical, and psychiatric services, including those available in the community, must be provided to the prisoner for that purpose, and prisoners who require specialized treatment or surgery must be transferred to specialized institutions or civil hospitals (Rule 27 of the

Mandela Rules, Paragraph 46.1 of EPR). EPR in paragraph 41 specifically states that every prison must have the services of at least one qualified general medical practitioner, that a qualified medical practitioner is always available and without delay in cases of emergency, and that if a prison does not have a full-time medical practitioner, a part-time medical practitioner must visit regularly. Furthermore, every prison must have personnel adequately trained in health care, and every prisoner must have access to certified dentists and opticians. Mandela rules (Rule 25) generally state that every prison must have in place a health care service tasked with evaluating, promoting, protecting, and improving the physical and mental health of prisoners, paying particular attention to prisoners with special health care needs and that the health care service consists of an interdisciplinary team with sufficient qualified personnel acting in full clinical independence and sufficient expertise in psychology and psychiatry. In addition, the services of a qualified dentist shall be available to every prisoner. Both documents emphasize that the organization of medical services in prison should be closely coordinated with the general health care administration of the community or nation. (Rule 24 (2) of the Mandela Rules, Paragraph 40.1 of EPR). They stress the necessity and significance of conducting the initial medical examination of each prisoner by a physician or other qualified health care professional as soon as feasible after admission. (Rule 30 of the Mandela Rules, Paragraph 42.1 of EPR). The majority of prisoners agree to undergo an initial medical assessment upon admission. However, there is a challenging balance to be struck between respecting the patient's ethical considerations by accepting their refusal to undergo the assessment, and the public health concern of conducting the assessment without the detainee's informed consent, particularly in cases involving contagious diseases (Convention Against Torture Initiative, 2021, p. 8).

Certain problems are emphasized as crucial when a prisoner is examined by a medical practitioner or other health care expert. These issues indicate the need to achieve equivalent objectives rather than just providing equivalent health care. Specifically, it is emphasized as essential to adhere to the standard rules of medical confidentiality, diagnose physical or mental illness and implement all necessary measures for its treatment and the continuation of existing medical treatment, record and report indications of violent treatment of prisoners, manage drug, medication, or alcohol-related withdrawal symptoms, identify psychological stress resulting from deprivation of liberty, isolate prisoners suspected of infectious diseases for the duration of the infection and provide them with appropriate treatment, prevent the isolation of prisoners carrying the HIV, and make

arrangements for the continuation of any necessary treatment after release with the consent of the prisoner. (Paragraph 42.3 of EPR, Rules 30, 32, and 34 of the Mandela Rules). EPR (Paragraph 43.1) also explicitly states that the medical practitioner shall see, under the conditions and with a frequency consistent with health care standards in the community, all sick prisoners, all who report illness or injury, and any prisoner to whom attention is specially directed.

Mandela's rules state that prisoners must have access to necessary health care services free of charge (Rule 24). In the WHO Declaration on Prison Health as a part of Public Health, member governments are recommended to ensure that all necessary health care for those deprived of their liberty is provided to everyone free of charge (WHO Regional Office for Europe, 2003).

An essential factor concerning access to health care in prisons is timely delivery, particularly in medical emergencies, as well as in all other situations, to prevent worsening results or unnecessary suffering. Mandela Rules state that "all prisons shall ensure prompt access to medical attention in urgent cases" (Rule 27), and EPR "*arrangements shall be made to ensure at all times that a qualified medical practitioner is available without delay in cases of urgency" (EPR paragraph 41.2).* In non-emergency situations, medical practitioners are required to adhere to the frequency of medical care that is considered standard in the community. The pace of the medical care offered is contingent upon the state of the individual, as certain conditions necessitate a more expeditious reaction from the medical personnel. The fundamental professional standards and obligations in health care are crucial in determining the appropriate conduct of medical staff in specific situations. The practice of international bodies overseeing the application of human rights reveals that the timely provision of medical care is a particularly challenging issue in prisons.

The EPR and Mandela Rules both emphasize the importance of preventative measures that are designed to address the most prevalent risks in prisons. Consequently, the authorities are explicitly obligated to prevent suicides and self-injury among detainees under the Mandela rules and EPR. Regarding infectious diseases, if a person is suspected to have an infectious health issue, it is necessary to isolate the patient and provide proper treatment until the contagious phase of the disease is over (Mandela Rules, Rule 30, EPR 42.3 (e,f)). Specific funds must be allocated to prevent violations of the right to health care concerning preventive measures, and states are permitted to determine which specific measures are necessary or

sufficient. Nevertheless, the answer to this issue is not always easy to identify in practice.[9]

International bodies practice

Although the UN Committee on Economic, Social and Cultural Rights (CESCR) has been empowered to accept and consider individual complaints since the Optional Protocol to CESCR entered into force in 2013, there has been no significant practice relating to the right to health.
European Committee of Social Rights under the Collective Complaints procedure did consider the right to protection of health (Article 11). However, the decisions on the merits mostly concern groups such as migrants, Roma, those living in poverty, children, and those facing poor working conditions.
Specific aspects of health care in prison, such as emergency medical aid or essential medical services that have a significant impact on people's health, must be provided. These fundamental necessities are included in basic civil and political rights, and international courts and bodies that monitor and interpret these rights have extensive practice in this field. Consequently, the refusal to provide medical assistance can result in severe human rights violations. The ECtHR stated that the right to life is violated when the authorities put the lives of individuals at risk by refusing to provide health care. Additionally, the right to life necessitates that the authorities take adequate steps to protect the lives of those under their jurisdiction.[10] It frequently involves violations of the prohibition of torture and other forms of inhuman or degrading treatment or punishment. Article 10(1) of the ICCPR, which broadly addresses the humane and dignified treatment of persons deprived of their liberty, may also be relevant. This obligation complements the prohibition of torture, inhuman or degrading treatment or punishment, as well as the prohibition of subjecting to a medical or scientific experiment without free consent, contained in Article 7 of the PGPP (Đukanović, 2016, p. 50). Thus, for instance, the UN Human Rights Committee determined that the absence of medical treatment was a violation of Articles 7 and 10 (1) of the ICCPR in a case involving a prisoner who was left without medical assistance after being beaten by security.[11] It can also involve a violation of the right to private life.[12] In

[9] *Shelly v. United Kingdom*.
[10] *Güzelyurtlu and Others v. Cyprus and Turkey* [GC], par. 219.
[11] Michael Bailey v. Jamaica**,** par. 9. 3.
[12] *Dickson v. United Kingdom*, par. 85.

addition, the detention of an individual with serious mental health issues can be considered "lawful" under the right to liberty and security if it is conducted in an adequate institution.

The UN Committee against Torture frequently provides states with recommendations on how to prevent torture if there is a lack of essential health care components, as a result of state reports and visits and individual complaint mechanisms. Also, the CPT is of particular significance at the European level. The ECtHR consults the standards and reports of the CPT, and the health of individuals deprived of their liberty is a primary concern during prison visits. The CPT has a substantial impact on penal practice in European countries.

Medical assistance must be provided in a timely manner to protect the individual's health. In one case for example, the UN Human Rights Committee determined that there was a breach of Article 10, paragraph 1 of the ICCPR, as the prisoner did not receive necessary medical aid when it was required[13]. In a case before the Inter-American Court of Human Rights, a prisoner was offered a medical procedure five years prior to it being performed. However, this delay resulted in a decline in his health, even though he had been receiving some medical care from a doctor during that time, the medical assistance provided was insufficient for his condition. The court found the violation of his physical, mental, and moral integrity, as well as inhuman and degrading treatment, and concluded that medical treatment has been insufficient and his health conditions have worsened.[14] The prohibition of torture or the right to life can be infringed if a significant period of time, such as 36 hours, or less, has not elapsed in cases of medical emergencies[15]. Consequently, it is a matter that is undoubtedly related to the individual's condition and recognized professional standards.

The ECtHR developed the most comprehensive practice regarding the right to health care of prisoners. Inadequate medical treatment in prison may also be the consequence of prisoners' irregular or absent appointments to the doctor[16]. The ECtHR has observed that it is inaccurate to claim that an individual who was not examined by a doctor for approximately one and a half years received reasonable and adequate medical assistance after the hunger strike[17].

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[13] *Kalenga v. Zambia*, par. 6.5.

[14] *Caesar v. Trinidad and Tobago.*

[15] *İlhan v. Turkey* [GC], paras. 87-88.

[16] *P*aul Lallion v. Grenada**,** par. 88.

[17] *Nevmerzhitsky v. Ukraine*, par. 105.

A refusal to transfer a prisoner to a civilian hospital for treatment, without a valid reason, when the necessary specialists and equipment are not available in prison, might potentially violate Article 3 of the ECHR[18]. In certain instances, it may be necessary for the authorities and the domestic courts to seek additional advice from a specialized medical expert in order to fulfill their positive obligation under Article 3 of the ECHR. For instance, if a single physician made the decision to deny surgery without conducting a comprehensive pre-surgical examination and a multidisciplinary assessment that involved multiple medical specialists[19].
Health services, despite their organization, might not be physically accessible to the sentenced individual depending on his condition. In one instance, the applicant was wheelchair-bound and suffered from a variety of health issues. His confinement was situated on the fourth floor of a building that lacked an elevator. He was anticipated to frequently use the stairs to receive hemodialysis and other essential medical services, as there was no elevator. The court determined a violation of Article 3 of the ECHR on account of the medical care provided since domestic authorities neglected to provide the applicant with safe and appropriate treatment, particularly concerning his disability, which resulted in his inability to access medical facilities[20].
Considering the conventional comprehension of health care, a convicted individual needs to have access to diagnostic procedures, in addition to therapeutic treatments. While therapeutic procedures are typically given more emphasis, it is important to acknowledge that health care encompasses both aspects. For instance, it may be necessary to provide specialized medical supervision in order to promptly diagnose and treat any potential recurrence of cancer, taking into account individual health state[21]. Preventive health care is also a critical component of prison health care. It is recognized that the risk of infectious disease transmission is elevated in prisons. Consequently, the state must make a greater effort to prevent the spread of these diseases. Several human rights can be violated due to the threat to the health and lives of detainees from the spread of infectious diseases and inadequate care. In this regard, the state is obligated to guarantee the prevention of the disease's transmission and the provision of suitable medical care to the ill, and a breach of this obligation may result in a violation of the right to life (HRC, 2002, p. 77). In situation where the

[18] *Mozer v. the Republic of Moldova and Russia* [GC], par. 179.
[19] *Budanov v. Russia*, par .73.
[20] *Arutyunyan v. Russia*, par. 81.
[21] *Popov v. Russia*, par. 211.

CPT had already determined that the state had not made sufficient efforts to prevent tuberculosis in prisons, this was one of the factors that was used to establish a violation of Article 3 of the ECHR[22]. The ECtHR also suggested that the prison administration's decision not to implement a program designed to reduce needle-borne infections could result in a violation of the right to private life. Nevertheless, the ECtHR also noted that the authorities are not obligated to implement any specific preventive health policy measure to combat infections in institutions for the execution of prison sentences. The ECtHR referenced the principle of the State's margin of appreciation, which allows states to select appropriate measures based on the available resources. In the aforementioned case, some preventive measures were implemented[23]. Concerning COVID-19, the ECtHR has declared that it is the responsibility of prison authorities to ensure the physical health and safety of prisoners. This includes the implementation of specific measures aimed at preventing infection, controlling the spread of the virus within the prison, and providing adequate medical care in case of contamination. Preventive actions should be proportional to the level of risk, but they should not excessively burden the authorities[24].

The extent of services that individuals must have access to is one of the most complex issues. The ECtHR noted that the adequacy of provided medical assistance is the most challenging aspect of evaluation[25]. In this context, the absence of equality concerning services that are offered to the general public is one of the fundamental parameters used to determine a violation of one of the human rights, with some distinctions that could be exclusively tied to deprivation of liberty (for example right to choose medical practitioner). States frequently cite a lack of funding as an excuse for not providing the right to access health care. ECtHR has stated that detention conditions that are so severe as to meet the requirements outlined in Article 3 of the ECHR cannot be justified by a lack of funding[26]. However, the ECtHR implemented an approach that does not align with the principle of equivalent health care. Namely, "medical treatment provided within prison facilities must be *appropriate*, that is, at a level *comparable* to that which the State authorities have committed themselves to provide to the population as a whole. Nevertheless, this does not mean

[22] *Staykov v. Bulgaria,* paras 81-81.
[23] *Shelly v. United Kingdom*.
[24] *Fenech v. Malta,* par. 129.
[25] *Aleksanyan v. Russia,* par. 139.
[26] Iovchev v. Bulgaria, par. 136.

that every detainee must be guaranteed the *same level* of medical treatment that is available in the best health establishments outside prison facilities."[27] The ECHR employs a flexible approach to establishing the necessary standard of health care, determining it on a case-by-case basis. The standard should be "consistent with the human dignity" of a detainee, while also considering "the practical requirements of imprisonment"[28].

In a case involving an HIV-positive prisoner, the ECtHR determined that the authorities were not obligated to provide specific high-cost anti-retroviral therapy. The ECtHR did not identify a violation of Article 3 of the ECHR in this context[29]. Nevertheless, it was observed that the prison medical personnel lacked sufficient experience in administering anti-retroviral therapy, resulting in a violation of Article 3 of the ECHR, due to the absence of specialized medical assistance for an HIV-positive prisoner[30].

For example, the ECtHR determined that the authorities had violated Article 3 of the ECHR by refusing to provide orthopedic footwear to a convicted individual who had had a foot amputated. This was due to the fact that the management of a medical institution declared that the individual required such footwear, although the relevant regulations on the supply of convicted persons did not mandate that the state provide such footwear. The ECtHR determined that the individual in question was subjected to challenges that exceeded the inevitable level of suffering for a six-year period, namely that the health and well-being of the convicted person were not adequately protected.[31] Also, a violation of Article 3 of the ECHR was determined as a result of the absence of dental care, which also had an impact on a person's overall health. The applicant was not provided with a dental prosthesis, since the current regulations required him to pay the costs in full. He was unable to do so even later, although a new law had been passed that would have allowed individuals in his situation to receive dentures free of charge[32]. Similarly, the applicant claimed that his eyesight had deteriorated as a result of a period of several months without glasses which were confiscated shortly after his arrest. The ECtHR determined that, despite the absence of evidence indicating that his vision has

[27] *Blokhin v. Russia* [GC], par. 137
[28] *Fenech v. Malta*, par. 128
[29] *Aleksanyan v. Russia,* par. 148-149.
[30] *Aleksanyan v. Russia,* par. 150-158.
[31] *Vladimir Vasilyev v. Russia,* paras. 67-70.
[32] *V.D. v. Romania, paras 94-100.*

permanently deteriorated, it created numerous challenges in his daily life. Consequently, it found a violation of Article 3 of the ECHR[33].

In various decisions, the European Court of Human Rights emphasized the significance of mental health protection in prisons. For example, the ECtHR held that: "Undeniably, detained persons who suffer from a mental disorder are more susceptible to the feeling of inferiority and powerlessness. Because of that an increased vigilance is called for in reviewing whether the Convention has been complied with"[34].

Drug, medication, or alcohol-related addiction and withdrawal symptoms are also among the most prevalent concerns in prison environments. According to the ECtHR, it is necessary to offer the prisoner the treatment corresponding to the disease the prisoner was diagnosed with. Drug addiction treatments remain controversial. As long as they comply with the prison medical care standards, states can choose between abstinence-oriented drug therapy and drug substitution therapy and set a general policy in this area.[35] However, if the circumstances of the case indicate that authorities did not thoroughly investigate and consult a specialized medical professional over a change in drug addiction treatment, this might potentially lead to a breach of Article 3 of the ECHR.[36] Regarding drug availability in prisons, the Court emphasized that authorities have a responsibility to implement measures to combat drug trafficking to safeguard the health and lives of citizens. Nevertheless, it is not possible to ensure the complete eradication of drugs, and authorities have broad discretion in determining the methods to be employed[37].

Concerning force-feeding during a hunger strike in prison, the ECtHR emphasized that a medical intervention that is deemed necessary based on established medical principles cannot be considered inherently inhuman or degrading. This principle also applies to cases where force-feeding is employed to save the life of a detainee who is consciously refusing to eat[38].

The ECtHR also identified a violation of Article 8 of the ECHR in a case involving the denial of access to assisted reproduction to a prisoner. The ECtHR determined that the absence of an evaluation of the rationale behind the restriction of the right to access the assisted reproduction procedure, which is of paramount importance to the applicants, and public interests

[33] *Slyusarev v. Russia*, paras 34-44.
[34] *Sławomir Musiał v. Poland,* par. 96.
[35] *Wenner v. Germany*, par. 61.
[36] *Wenner v. Germany*, par. 80.
[37] *Marro and Others v. Italy*, par. 45.
[38] *Ciorap v. Moldova*, par. 77.

"must be seen as falling outside any acceptable margin of appreciation so that a fair balance was not struck between the competing public and private interests involved".[39] Although the government justified its approach with the issue of the inevitable absence of one parent, which would have had negative consequences for the child and society as a whole, there were no security or other physical or financial barriers (applicants would have paid any expenses).

Access to health care also necessitates the continuity of treatment, which means that the treatment of a variety of physical or psychological conditions and disorders must be consistent. In some cases, this support may be required after the individual has been released. If the treatment was initiated at the prison hospital and subsequently discontinued without medically justifiable reason, adequate medical assistance was not provided[40].

The prohibition of subjecting to a medical or scientific experiment without free consent is encompassed within the prohibition of torture (explicitly in ICCPR). In one case before the Human Rights Committee, a violation of Article 7 of the PGPP was identified in this context. Specifically, the applicant was the subject of a psychiatric experiment while in prison, as he was administered sedatives every two weeks against his will.[41] The issue of prisoner participation in medical experiments is contentious due to potential abuse, and the difficulty of ensuring the confidentiality and free and informed consent of the participants. In contrast, there is a prospective foundation for the right to access medical research and experimental medicines (Đukanović, 2016a, pp. 283-286). While imprisonment should not stand in the way of potential benefits from scientific developments, the difficulties inherent to the prison environment must be considered.

Conclusion

Although there is no significant practice directly related to the right to access health care or the right to health of prisoners, the bodies that monitor the implementation of civil and political rights, particularly the ECtHR, have developed standards directly relevant to the issue. They are primarily consistent with the EPR and Mandela Rules. However, the ECtHR reserves flexibility for the states regarding healthcare equivalence. This can be attributed to the acknowledgment of physical, economic, and organizational constraints associated with prison environments, and the fact that prison

[39] *Dickson v. United Kingdom*, par. 85.
[40] *Paladi v. Moldova*, par. 85.
[41] *Viana Acosta v. Uruguay.*

health care is still regarded as substandard to some extent, despite the equivalence of health care declared in Mandela Rules and EPR. The civil and political rights practice is not associated with the prohibition of discrimination, as it is not linked to internationally prohibited grounds of discrimination. Nevertheless, it typically entails some form of evaluation of disparities in treatment between individuals with comparable medical needs and equal treatment in general on this matter. The ECtHR is satisfied with appropriate health care at a comparable level, which does not necessarily have to be the same as for the general population, as long as it is consistent with human dignity while bearing in mind the practical requirements of imprisonment. However, prisons are acknowledged to be at a higher risk of developing specific health issues and necessitate not only equivalence of care but equivalent objectives, as previously mentioned. Authorities have a special obligation to safeguard the health of prisoners since they are in a dependent position with limited options compared to the general public. The specific health care services that individuals have access to remain one of the most complex issues related to access to health care in prisons, as well as in the general population. The ECtHR, which has the most advanced practice, addresses issues following the unique circumstances of each case, in addition to a few general principles.

Mandela and EPR provide some of the essential requirements for the provision of health care in prisons, with a particular emphasis on the medical examination carried out upon admission. Some of the identified prison-specific issues must be the focus of the therapeutic, diagnostic, and preventative measures. The specific measures that must be taken are usually not elaborated upon, as they are closely related to the overall health policy and expenses, as well as specific circumstances.

One of the strategic objectives of the WHO is to reach health care standards equivalent to those in the wider community. The WHO Office for Europe had a substantial role in enhancing the accessibility and quality of health care in prisons. Collecting reliable data on vital health indicators in European prisons could aid in identifying key issues and developing guidelines to address these difficulties. However, additional states must participate in providing data, as the Health in Prisons European Database (HIPED) received data from 36 of the 53 member states in 2020. Since the practice also demonstrates challenges in ensuring timely access to health care, there should be a greater emphasis placed on this issue, particularly in medical emergencies, as well as the provision of secondary health care, although gathering data on this matter is challenging. WHO however addresses some of the issues that should elevate timely access. These issues include security concerns and dual loyalty of health care professionals,

expense concerns, inadequately trained personnel, and physical and other organizational obstacles in prisons.

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Original Scientific Paper

Women in Helping Professions: Secondary Traumatization and Psychosocial Support for Vulnerable Groups

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This research paper analyzes the level of secondary traumatization among women in helping professions who provide psychosocial support to vulnerable groups. The aim of the study was to determine whether women engaged in this work experience higher levels of secondary traumatization compared to the general population, as well as to examine the relationship between socio-demographic and professional characteristics and the degree of traumatization. The methodological approach included the analysis of data collected from 80 respondents, utilizing a questionnaire on secondary traumatization and relevant demographic information. The results indicated that women in helping professions have moderate level of secondary traumatization, with a relationship established between age, marital status, and education and the degree of traumatization. Based on these findings, the development of specific training and support programs for women in this field is recommended to mitigate the negative effects of secondary traumatization.

Keywords: *Secondary traumatization, Secondary stress disorder, Mental Health, Helping professions, Vulnerable groups*

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Introduction

According to Connorton, Perry, Hemenway & Miller (2012), Canfield, 2005; Figley, 1995, secondary traumatization (ST) is a phenomenon in which people who are deeply involved in providing support and care for people who have experienced trauma start to show symptoms resembling those of post-traumatic stress disorder (PTSD). Despite not having personally experienced a traumatic event, they may suffer serious emotional and psychological consequences from their regular interactions with traumatized clients. Secondary traumatization is particularly pronounced among professionals in helping professions, such as psychotherapists and counselors, social workers, translators, clinicians, and medical workers (Bride, 2024; Glomazić, Mikić, 2022; Lee, Gottfried, & Bride, 2018; Kindermann et al., 2017; Choi, 2011), educators (Van Bergeijk & Sarmiento, 2006), juvenile correctional facility staff (Smith Hatcher, Bride, Oh, Moultrie King, and Franklin Catrett, 2011), humanitarian workers (Connorton et al., 2012), and prison staff (Maslach, Schaufeli & Leiter, 2001; Maslach & Leiter, 2016), who often work with the most vulnerable groups in society.

Baum (2016) notes that even though there is a shortage of studies on this subject, several studies (van der Meer, Bakker, Smit, Buschbach, S., Dekker, Westerveld, Hutter, Gersons, Berthold & Olff, 2017; Baum 2016) point to specific behavioral patterns.

Among clinicians who treat traumatized clients, there is evidence of gender distinctions in sensitivity to secondary traumatic stress (STS), with women demonstrating greater susceptibility to post-traumatic stress disorder (PTSD) (Baum, 2016). Women are more prone than men to secondary traumatization in these professions since they make up a larger percentage of the workforce (Cohn-Schwartz & Schmitz, 2024; Bakhshi, Wesley & Reddy, 2021; Baum, Rahav & Sharon, 2014). They are frequently more susceptible to the detrimental emotional effects of working with traumatized individuals because of their gender role in society and emotional engagement. According to Yücel and Akoğlu (2023), women who work in helping professions including social work and therapy often offer strong emotional support, which raises the possibility of secondary traumatization. Women are more likely than men to internalize the traumas experienced by their clients because of their greater emotional sensitivity and empathy (Bakhshi, Wesley & Reddy, 2021). This might result in emotional weariness. However, in keeping with gender norms, males tend to be less empathetic, which may shield them from becoming deeply involved emotionally in traumatic stories.

There is a lack of psychological research on differences between genders in the context of secondary traumatization. Nonetheless, some research indicates that biological differences, especially those pertaining to oxytocin, might have a role in the emergence of post-traumatic stress disorder (PTSD) in females (Olff, 2017). Research on secondary traumatization among police officers has revealed that women experience greater symptoms of post-traumatic stress disorder (PTSD) than their male counterparts. This difference in PTSD symptoms has been attributed to a combination of psychosocial and biological factors, such as those linked to oxytocin. Some studies on law students have shown that women who work in professions that involve treating traumatic cases are more likely to experience secondary traumatization. These findings have been attributed to high levels of neuroticism and slightly more pronounced extraversion (Bakhshi, Wesley & Reddy, 2021).

Understanding the specific challenges that women face in these roles, as well as identifying protective factors and strategies to reduce the risk of secondary traumatization, is essential for enhancing their professional lives and overall well-being. This paper aims to explore and deepen the understanding of secondary traumatization among women providing psychosocial support services.

Risks and Symptoms of Secondary Traumatization

The term "secondary traumatization" refers to the psychological and emotional strain that those who work with traumatized individuals feel when they start exhibiting symptoms that resemble those of post-traumatic stress disorder (PTSD) (Stamm, 2010; Figley, 1995). Helping someone who has gone through a traumatic event or wanting to help someone who has, results in this indirect exposure to trauma (Stamm, 2010). Although these professionals are not exposed to horrific situations directly, they absorb their experiences through deep and compassionate encounters with survivors (Figley, 1995). Trauma exposure at work can be a major risk factor for workers' mental health (Glomazić, 2020), a phenomenon that is especially noticeable in caring professions.

The Professional Quality of Life Scale (ProQOL), created by Stamm (2010), measures the positive effects and drawbacks of interacting with traumatized persons. Secondary traumatic stress (STS), which results from indirect exposure to another person's trauma through assisting, is included in the scale. STS is characterized by distress, intrusive thoughts, and avoidance of trauma triggers (Stamm, 2010).

Symptoms of secondary traumatization include emotional exhaustion, anxiety, depression, depersonalization, intrusive thoughts, sleep disturbances, changes in behavior, phobic thoughts, mistrust of others' intentions, avoidance of triggers, anger, reduced sense of self-efficacy, changes in memory and perception, fear, guilt, hopelessness, and physical symptoms (Kounenou, Kalamatianos, Nikoltsiou & Kourmousi, 2023; NCTSN, 2011; Cieslak et al., 2014; Bride et al., 2004). These consequences negatively impact both the personal and professional lives of helpers.

Social workers, psychotherapists, interpreters, and other staff members in refuges and camps for migrants are among the people who deal with vulnerable populations on a daily basis and are therefore especially susceptible to secondary trauma (Kindermann et al., 2017). According to a 2017 study by Kindermann et al., 21% of interpreters who deal with refugees have signs of secondary traumatization, 6% of which have a severe case and 9% have PTSD. In addition, compared to the general population, women in this community are more likely to experience stress, anxiety, and depression (Kindermann et al., 2017).

According to Choi's (2011) research, 30% of social workers who assist victims of sexual and domestic abuse experience mild to severe secondary trauma symptoms. These professionals might experience burnout, compassion fatigue, and emotional exhaustion as a result of frequently confronting the horrific experiences of their clients. Secondary trauma affects 15% of clinical social workers, according to research by Lee, Gottfried, and Bride (2018) however, this prevalence is lower in other social worker demographics.

According to a study done with nurses in Ireland, up to 64% of them fit the criteria for determining the prevalence of secondary traumatization (Duffy et al., 2015); in Scotland, Morrison and Joy (2016) report that this figure is 39%.

Workers in refuges and migrant camps, who offer everyday support to those impacted by conflicts and challenging migration experiences, are equally susceptible to secondary trauma (Glomazić, Mikić, 2022; Kindermann et al., 2017). These workers' mental health is impacted by hearing horror and loss stories all the time, which raises the possibility of secondary trauma (Glomazić, Mikić, 2022; Kindermann et al., 2017).

Educators working with at-risk youth are also susceptible to secondary trauma. Research by Van Bergeijk and Sarmiento (2006) identified educators as a high-risk group, while a study by Smith Hatcher, Bride, Oh, Moultrie, King & Franklin Catrett (2011) found that 39% of educators in juvenile justice facilities reported symptoms of secondary trauma, and 81% reported experiencing at least one key symptom. Direct care staff in

residential treatment centers also face a high risk of secondary trauma. Zerah (2013) found that 27% of employees in these centers reported high levels of secondary trauma symptoms, while Beck (2011) and Zerah & Shalev (2015) noted similar results among nurses. Brady (2017) and MacEachern et al. (2011) documented the presence of secondary trauma among police investigators. Women in particular who work as professionals in correctional facilities are particularly vulnerable to secondary trauma. When it comes to providing psychosocial support, working with female prisoners is a difficult subject. Service workers frequently come with intensely personal accounts of abuse and trauma, which can cause further traumatization. The transfer of traumatic events from customers to service providers is a phenomena that can have a major negative effect on the mental health and general wellbeing of everyone involved. According to Ilijić, Pavićević, and Glomazić (2016), among the factors associated with recidivism is mental health.

Secondary traumatic stress, according to Figley (2002), is a range of emotional and psychological reactions to another person's stress that happen in caregivers as an involuntary attempt to comprehend and relate to trauma survivors. This problem has the potential to compromise professionals' mental well-being and productivity. According to Bride et al. (2004) and Figley (2002), employees who have experienced greater secondary trauma are more likely to find it challenging to help clients in need. Many risk factors, such as age, the type of work one does, the frequency and intensity of trauma exposure, low self-efficacy, lack of professional support and supervision, and an unstable work-life balance, can lead to secondary traumatization (Kindermann et al., 2017; Lalonde & Dauphin, 2016). According to Stamm (2010), there can be a cumulative stress effect from ongoing exposure to traumatic experiences, and feelings of emotional overload and loneliness might worsen when there is little supervision. A high level of empathy, which is essential for providing quality psychosocial support, can also act as a risk factor, as providers who are highly empathetic may be more affected by their clients' traumas (Baum, Rahav & Sharon, 2014). Despite the presence of risk factors, there are also protective mechanisms that can help reduce the risk of secondary traumatization. Professional supervision, a strong social network, and regular self-care practices can significantly enhance the resilience of psychosocial support providers (Lalonde & Dauphin, 2016). Additionally, ongoing professional development and education on recognizing and managing stress can help strengthen providers' ability to cope with the challenges of their work (Kindermann et al., 2017).

Method

This quantitative study used an empirical-descriptive methodology. The study examines secondary traumatization among women in helping professions who offer vulnerable populations psychosocial care, as well as an examination of their professional and sociodemographic features. The study's objectives are to ascertain the degree of secondary traumatization in these women in comparison to the overall population and investigate the association between the degree of secondary traumatization and sociodemographic and professional traits.

The general hypothesis holds that, in comparison to the general population, women in helping professions who offer psychosocial support to vulnerable groups have higher levels of secondary traumatization. The first hypothesis states that socio-demographic and professional characteristics are positively related to the degree of secondary traumatization. For the purposes of the research, a standardized instrument was used - *Secondary Traumatic Stress Scale,* as well as an *Online questionnaire* to gather demographic and professional data.

Data was gathered in Serbian territory between April and June of 2024. The sample is made up of female professionals who work in non-governmental organizations, women's shelters, migrant centers, and receiving centers and who offer psychosocial support to traumatized people, migrants, asylum seekers, and victims of abuse. Since it was believed that psychological care providers needed to meet specific requirements, a sample of highly educated respondents was used.

The data are presented through frequencies and percentages, as well as Mean and Std. Deviation. Differences were tested using ANOVA and Independent Samples T-test. Data analysis was conducted using the statistical program IBM SPSS Statistics for Windows, Version 24.0 (IBM Corp., Armonk, NY, USA). Values of $p \leq 0.05$ are considered statistically significant.

Results

Table 1 *General information about the respondents*

	N = 80
Age (years), Mean (Std. Deviation), Min - Max	41.38 (7.16), 27.0 – 54.0
Age categories, n (%)	
23 - 33	14 (17.5%)
34 - 43	39 (48.8%)
44 - 53	18 (22.5%)
54 - 67	9 (11.3%)
Marital status, n (%)	
Single	20 (25.30%)
Married	41 (51.2%)
Divorced	14 (17.5%)
Widowed	0 (0.0%)
Education level, n (%)	
High school	0 (0.0%)
University degree (graduate studies)	56 (70.0%)
Postgraduate studies/doctorate	24 (30.0%)

The study included N = 80 women aged from Min = 27 to Max = 54 years, with an average age of 41.38 (SD = 7.16). The majority (70.0%) have a university degree, while 30% have completed postgraduate studies. Half of the sample consists of married respondents (51.2%), 25.30% are single, and 17.5% are divorced. Table 1 shows the general information about the respondents.

Table 2 *Professional experience in service provision*

	n (%)
Type of work	
Counseling	38 (47.5%)
Psychotherapy	5 (6.3%)
Social Work	38 (47.5%)
Cultural Mediation	5 (6.3%)
Humanitarian Work	29 (36.3%)
Healthcare	0 (0.0%)
Field Work	29 (36.3%)
Age Groups of Service Users	
Children (1 – 12 years of age)	5 (6.3%)
Youth (13 – 17 years of age)	15 (18.8%)
Young Adults(18 – 25 years of age)	24 (30.0%)
Adults (18 – 64 years of age)	32 (40.0%)
Elderly (65 years of age and above)	4 (5.0%)
Therapeutic Training	
Yes	30 (37.5%)
No	50 (62.5%)
Specific Training on Trauma	
Yes	58 (72.5%)
No	22 (27.5%)

Counseling and social work comprise 47.5% of the respondents' work with sensitive groups. 36.3% of the population works in humanitarian aid, and another 36.3% conducts fieldwork. The remaining 6.3% of the population is employed in psychotherapy and cultural mediation. Seventy-odd percent of users are in the 18–64 age range. Of the respondents, 37.5% have completed training to become psychotherapists, 72.5% have completed trauma-specific training, and 60.0% have professional licenses to provide services (Table 2).

Table 3 *Descriptive statistics of Secondary Traumatic Stress Scale*

Items and Total Scores	Min–Max	M	SD	α
1. I felt emotionally numb	1 - 5	2.31	0.91	0.971
2. My heart started pounding when I thought about my work with clients	1 - 5	1.58	1.05	0.969
3. It seemed as if I was reliving the trauma(s) experienced by my client(s)	1 - 5	2.21	1.03	0.971
4. I had trouble sleeping	1 - 5	2.48	1.22	0.972
5. I felt discouraged about the future	1 - 5	2.13	0.92	0.969

6. Reminders of my work with clients upset me	1 - 5	1.84	1.00	0.969
7. I had little interest in being around others	1 - 5	1.95	0.95	0.969
8. I felt jumpy	1 - 5	2.49	1.06	0.969
9. I was less active than usual	1 - 5	2.36	0.96	0.971
10. I thought about my work with clients when I didn't intend to	1 - 5	2.93	1.25	0.976
11. I had trouble concentrating	1 - 5	2.38	1.04	0.969
12. I avoided people, places, or things that reminded me of my work with clients	1 - 5	1.54	1.05	0.969
13. I had disturbing dreams about my work with clients	1 - 5	1.84	1.17	0.969
14. I wanted to avoid working with some clients	1 - 5	2.14	1.16	0.970
15. I was easily annoyed	1 - 5	2.11	1.26	0.970
16. I expected something bad to happen	1 - 5	1.89	1.09	0.969
17. I noticed gaps in my memory about client sessions	1 - 5	1.64	1.05	0.969
Secondary Traumatization Total Score	23-85	35.79	15.15	0.972

Note. M = Mean; SD = Std. Deviation; α = Cronbach's alpha.

The scale as a whole, as well as all items, demonstrate excellent reliability measured by Cronbach's alpha coefficient. The reliability of the items ranges from α = 0.969 to α = 0.976, while the reliability of the scale as a whole on the sample of women from Serbia is α = 0.972. The theoretical range of the scale spans from Min = 17 to Max = 85, with higher scores indicating more pronounced traumatization. The average score achieved by the sample of respondents from Serbia is 35.79 (*SD* = 15.15), indicating moderate secondary traumatization. The highest score and the most significant trauma for respondents were in the area of automatic thoughts: I thought about working with clients without intending to (item 10), 2.93 (*SD* = 1.25). Avoidance was the least frequent reaction: I avoided people, places, and things that remind me of working with clients (item 12), 1.54 (M = 1.05).

Table 4 *Secondary Traumatic Stress Scale Items among respondents with different characteristics*

	Item 1	**Item 2**	**Item 3**	**Item 4**	**Item 5**	**Item 6**	**Item 7**	**Item 8**	**Item 9**
Age categories (p-value)[a]	< 0.001	< 0.002	< 0.003	< 0.004	< 0.005	< 0.006	< 0.007	< 0.008	< 0.009
23 - 33 g.	2.71 (0.47)	1.29 (0.47)	2 (0)	3.36 (0.5)	2 (0)	2 (0)	2 (0)	2.64 (0.5)	3.29 (0.47)
34 - 43 g.	2 (0.51)	1.23 (0.43)	1.72 (0.83)	1.74 (0.85)	1.64 (0.49)	1.38 (0.49)	1.51 (0.51)	2 (0)	2 (0)

44 - 53 g.	2.22 (0.43)	1.72 (0.83)	2.5 (0.51)	2.56 (1.15)	2.5 (0.51)	2 (0.69)	2.22 (0.43)	3.06 (1.3)	2 (0.69)
54 - 67 g.	3.22 (2.11)	3.22 (2.11)	4.11 (1.05)	4.11 (1.05)	3.67 (1.58)	3.22 (2.11)	3.22 (2.11)	3.22 (2.11)	3.22 (2.11)
Marital status (p-value) [a]	0.006	0.005	< 0.001	< 0.001	< 0.001	< 0.001	0.175	0.013	0.128
Single	2.5 (0.51)	1.5 (0.51)	2 (0.73)	3.25 (0.85)	2.25 (0.44)	2 (0)	2 (0)	3 (1.26)	2.5 (0.51)
Married	1.98 (0.47)	1.39 (0.67)	2.07 (0.75)	2.1 (0.89)	1.76 (0.62)	1.54 (0.67)	1.88 (0.56)	2.2 (0.4)	2.2 (0.75)
Divorced	2.79 (1.76)	2.43 (1.99)	3.36 (1.34)	3 (1.75)	3.07 (1.49)	2.79 (1.76)	2.43 (1.99)	2.79 (1.76)	2.79 (1.76)
Education level (p-value) [b]	0.001	< 0.001	0.001	< 0.001	< 0.001	< 0.001	0.001	< 0.001	0.003
University degree (graduated)	2.09 (0.64)	1.21 (0.56)	1.96 (0.71)	2.14 (1.09)	1.89 (0.49)	1.57 (0.63)	1.73 (0.59)	2.16 (0.53)	2.16 (0.76)
Postgraduate studies	2.83 (1.2)	2.42 (1.41)	2.79 (1.38)	3.25 (1.19)	2.67 (1.37)	2.46 (1.38)	2.46 (1.38)	3.25 (1.51)	2.83 (1.2)
Doctorate									
Therapeutic Training (p-value) [b]	0.154	0.089	0.002	0.888	0.117	0.021	0.116	0.001	0.323
Yes	2.5 (1.14)	1.83 (1.49)	2.67 (1.27)	2.5 (1.63)	2.33 (1.4)	2.17 (1.37)	2.17 (1.37)	3 (1.44)	2.5 (1.14)
No	2.2 (0.73)	1.42 (0.64)	1.94 (0.74)	2.46 (0.91)	2 (0.4)	1.64 (0.63)	1.82 (0.56)	2.18 (0.56)	2.28 (0.83)
Specific Train. on Trauma (p-value) [b]	0.392	0.878	0.421	< 0.001	0.736	0.374	0.775	0.685	0.008
Yes	2.26 (0.95)	1.59 (1.14)	2.16 (1.17)	2.19 (1.3)	2.1 (1.05)	1.78 (1.11)	1.93 (1.06)	2.52 (1.14)	2.19 (0.91)
No	2.45 (0.8)	1.55 (0.8)	2.36 (0.49)	3.23 (0.43)	2.18 (0.39)	2 (0.62)	2 (0.62)	2.41 (0.8)	2.82 (0.96)
Type of work_ Counseling [b]	2.42 (1.13)	1.89 (1.31)	2.47 (1.27)	2.37 (1.46)	2.42 (1.13)	2.05 (1.25)	1.92 (1.3)	2.68 (1.44)	2.29 (1.11)
p Value	0.312	0.009	0.030	0.462	0.005	0.067	0.798	0.113	0.520
Type of work_ Social Work [b]	2.11 (0.61)	1.45 (0.69)	1.84 (0.79)	2.08 (0.94)	1.97 (0.49)	1.71 (0.65)	1.84 (0.59)	2.21 (0.41)	2.32 (0.66)
p Value	0.052	0.305	0.002	0.005	0.163	0.283	0.339	0.025	0.681
Type of work_	2.34 (0.48)	1.17 (0.38)	1.48 (0.51)	1.69 (0.76)	1.83 (0.38)	1.52 (0.51)	1.66 (0.48)	2 (0)	2.03 (0.57)

Humanitarian Work[b]									
p Value	0.812	0.009	< 0.001	< 0.001	0.028	0.030	0.036	0.001	0.020
Type of work_ Field Work[b]	2.03 (0.57)	1.34 (0.48)	1.97 (0.82)	1.97 (1.18)	2.17 (0.38)	1.69 (0.47)	1.52 (0.51)	2.38 (1.27)	1.86 (0.35)
p Value	0.038	0.141	0.105	0.004	0.730	0.321	0.002	0.493	< 0.001
Age groups of Users (p-value)[a]	< 0.001	< 0.001	< 0.001	< 0.001	< 0.001	< 0.001	< 0.001	< 0.001	< 0.001
Children (1 – 12 years) and youth (13 – 17)	2 (0.85)	1 (0)	1.33 (0.49)	1.67 (0.98)	2 (0)	1.33 (0.49)	1.67 (0.49)	2 (0)	2 (0)
Young adults (18 – 25)	2 (0)	1.58 (0.5)	1.96 (0.91)	2 (1.14)	1.83 (0.76)	1.63 (0.49)	1.42 (0.5)	2.63 (1.24)	2 (0)
Adults (26 – 64) and elderly (65 y. of age and above)	2.19 (0.64)	1.13 (0.34)	2.28 (0.46)	2.75 (0.88)	1.84 (0.37)	1.59 (0.5)	1.88 (0.34)	2.16 (0.63)	2.31 (1)

Item 1 = I felt emotionally numb, Item 2 = My heart started pounding when I thought about my work with clients, Item 3 = It seemed as if I was reliving the trauma(s) experienced by my client(s), Item 4 = I had trouble sleeping, Item 5 = I felt discouraged about the future, Item 6 = Reminders of my work with clients upset me, Item 7 = I had little interest in being around others, Item 8 = I felt jumpy, Item 9 = I was less active than usual.

Note. Mean (Std. Deviation) are showen in table.[a]ANOVA, [b]Independent Samples T-test.

The oldest respondents (ages 54–67) have the highest level of secondary traumatization in all domains, including tension, irritation, and decreased activity, as well as physical stress and emotional numbness when considering dealing with clients.

Respondents of different marital statuses exhibit varying levels of secondary traumatization across nearly all aspects. Divorced individuals report the highest level of emotional exhaustion, with pronounced symptoms such as feelings of emotional numbness and discouragement about the future. More than others, they tend to avoid people, places, and things that remind them of their work with clients. They experience

disturbing dreams, avoid working with clients, become easily irritated, perceive negative future events, and have memory gaps regarding their sessions with clients.

On the other hand, single respondents experienced sleep problems more frequently than others, reported greater difficulties with concentration, and exhibited more pronounced symptoms of tension and distress.

Those with a university degree and those with postgraduate or doctorate degrees exhibit significantly different symptoms, according to data on secondary traumatization analyzed based on their level of education. Compared to people with a university degree, those with postgraduate or doctoral degrees report much higher scores on the majority of items related to emotional weariness.In particular, they report more severe symptoms like emotional numbness, insomnia, hopelessness about the future, anxiety about dealing with clients, and increased levels of stress and impatience. These people also report having more trouble focusing and are more likely to avoid situations that remind them of working with clients. On the other hand, those who have a university degree typically report lower scores across all categories on the questionnaire.

Individuals who have received therapeutic training report higher scores on most items compared to their colleagues who have not received therapeutic training, however participants with specific trauma training do not differ from those without this training. They report higher levels of tension, impatience, and difficulty concentrating. They also feel uncomfortable at the notion of working with clients and more deeply experience the traumas of their clients. In addition, they report having unsettling dreams about their work with clients more frequently and having a stronger inclination to steer clear of particular clients. Furthermore, those who have received therapeutic training are more prone to anticipate negative outcomes.

The counseling profession carries a higher level of traumatization in the following areas: "My heart started racing at the thought of working with clients" (Item 2), "It felt like I was reliving the traumas and experiences of my clients" (Item 3), "I felt discouraged about the future" (Item 5), "I avoided people, places, and things that reminded me of working with clients" (Item 12), "I had disturbing dreams about my work with clients" (Item 13), "I wanted to avoid working with certain clients" (Item 14), "I was easily irritated" (Item 15), and "I expected something bad to happen" (Item 16). Therefore, trauma is greater among these participants who are engaged in counseling.

Those who work with adults (ages 18–25 and 26–64) experience more pronounced traumatization compared to those who work with younger individuals (under 25 years old).

Table 5 *Secondary Traumatic Stress Scale Items among respondents with different characteristics, continuation*

	Item 10	**Item 11**	**Item 12**	**Item 13**	**Item 14**	**Item 15**	**Item 16**	**Item 17**
Age categories (p-value) [a]	0.010	0.011	< 0.001	< 0.001	< 0.001	< 0.001	< 0.001	< 0.001
23 - 33 years of age	2 (0.88)	3 (0)	1 (0)	1 (0)	2 (0.88)	1.93 (0.83)	1.93 (0.83)	1.64 (0.5)
34 - 43 years of age	3.05 (1.32)	1.77 (0.43)	1.13 (0.34)	1.38 (0.49)	1.64 (0.71)	1.38 (0.49)	1.51 (0.51)	1.13 (0.34)
44 - 53 years of age	3 (0.77)	2.78 (0.88)	2 (0.69)	2.56 (1.15)	2.78 (0.88)	3.06 (1.3)	2 (1.03)	1.94 (0.73)
54 - 67 years of age	3.67 (1.58)	3.22 (2.11)	3.22 (2.11)	3.67 (1.58)	3.22 (2.11)	3.67 (1.58)	3.22 (2.11)	3.22 (2.11)
Marital status (p-value) [a]	0.012	0.001	0.003	0.005	< 0.001	< 0.001	0.001	0.005
Single	2.5 (1.15)	3 (0.73)	1.5 (0.51)	2 (1.26)	2.75 (1.12)	2.5 (1.54)	2 (0.73)	1.75 (0.44)
Married	2.95 (1.22)	2.1 (0.54)	1.32 (0.65)	1.56 (0.67)	1.76 (0.62)	1.61 (0.8)	1.51 (0.81)	1.39 (0.67)
Divorced	3.79 (1.25)	2.79 (1.76)	2.43 (1.99)	2.71 (1.82)	2.79 (1.76)	3.07 (1.49)	2.79 (1.76)	2.43 (1.99)
Education level (p-value) [b]	0.462	< 0.001	< 0.001	< 0.001	< 0.001	< 0.001	0.002	< 0.001
University degree (graduated)	2.86 (1.18)	2.07 (0.63)	1.23 (0.57)	1.48 (0.63)	1.82 (0.69)	1.79 (0.68)	1.64 (0.72)	1.29 (0.59)
Postgraduate studies /Doctorate	3.08 (1.41)	3.08 (1.41)	2.25 (1.51)	2.67 (1.66)	2.88 (1.62)	2.88 (1.87)	2.46 (1.53)	2.46 (1.38)
Therapeutic Training (p-value) [b]	< 0.001	0.002	0.051	0.003	0.001	0.033	0.004	0.197
Yes	3.83 (0.91)	2.83 (1.23)	1.83 (1.49)	2.33 (1.63)	2.67 (1.4)	2.5 (1.83)	2.33 (1.4)	1.83 (1.49)
No	2.38 (1.1)	2.1 (0.79)	1.36 (0.63)	1.54 (0.65)	1.82 (0.85)	1.88 (0.66)	1.62 (0.75)	1.52 (0.65)
Specific Training on Trauma (p-value) [b]	0.001	0.166	0.367	0.172	0.516	0.918	0.737	0.480

Yes	3.21 (1.28)	2.28 (1.1)	1.6 (1.14)	1.95 (1.28)	2.19 (1.23)	2.1 (1.41)	1.86 (1.16)	1.59 (1.14)
No	2.18 (0.8)	2.64 (0.79)	1.36 (0.79)	1.55 (0.8)	2 (0.93)	2.14 (0.77)	1.95 (0.9)	1.77 (0.75)
Type of work Counseling[b]	3.08 (1.32)	2.32 (1.42)	1.79 (1.34)	2.16 (1.5)	2.45 (1.43)	2.55 (1.54)	2.32 (1.21)	1.79 (1.34)
p Value	0.298	0.630	0.041	0.019	0.022	0.002	0.001	0.219
Type of work Social Work[b]	3.29 (1.11)	2.08 (0.59)	1.34 (0.67)	1.61 (0.68)	1.84 (0.79)	1.82 (0.77)	1.95 (0.7)	1.45 (0.69)
p Value	0.012	0.014	0.116	0.093	0.029	0.045	0.643	0.123
Type of work Humanitarian Work[b]	2.31 (0.47)	2 (0.6)	1.34 (0.48)	1.34 (0.48)	1.83 (0.71)	1.66 (0.48)	1.34 (0.48)	1.48 (0.51)
p Value	0.001	0.014	0.220	0.004	0.070	0.014	0.001	0.322
Type of work Field Work [b]	3.03 (1.02)	2.03 (1.02)	1.34 (0.48)	1.83 (1.1)	2.21 (1.08)	2.34 (1.29)	2.03 (0.57)	1.34 (0.48)
p Value	0.558	0.026	0.220	0.955	0.688	0.217	0.367	0.059
Age groups of users(p-value) [a]	< 0.001	< 0.001	< 0.001	< 0.001	< 0.001	< 0.001	< 0.001	< 0.001
Children (1 – 12 years) and youth (13 – 17)	3.67 (1.29)	1.67 (0.49)	1 (0)	1.33 (0.49)	1.33 (0.49)	1.33 (0.49)	1.67 (0.49)	1 (0)
Young adults (18 – 25)	2.67 (1.2)	2.25 (0.99)	1.42 (0.5)	1.83 (1.2)	2.46 (1.02)	2.25 (1.51)	1.83 (0.76)	1.42 (0.5)
Adults (26 – 64) and elderly (65 years of age and above)	2.44 (0.95)	2.31 (0.69)	1.16 (0.37)	1.44 (0.5)	1.72 (0.73)	1.81 (0.64)	1.41 (0.71)	1.41 (0.5)

Item 10 = I thought about my work with clients when I didn't intend to, Item 11 = I had trouble concentrating, Item 12 = I avoided people, places, or things that reminded me of my work with clients, Item 13 = I had disturbing dreams about my work with clients, Item 14 = I wanted to avoid working with some clients, Item 15 = I was easily annoyed, Item 16 = I expected something bad to happen, Item 17 = I noticed gaps in my memory about client sessions.

Note. Mean (Std. Deviation) are showen in table. [a]ANOVA, [b]Independent Samples T-test.

Table 6 *Secondary traumatization among respondents with different characteristics*

	Secondary Traumatization Total Score
Age categories (p-value) [a]	0.018
23 - 33 years of age	35.79 (2.49)
34 - 43 years of age	28.23 (3.54)
44 - 53 years of age	40.89 (11.62)
54 - 67 years of age	58.33 (31.62)
Marital status (p-value) [a]	0.001
Single	39 (8.37)
Married	31.29 (7.8)
Divorced	48.21 (28.53)
Education level (p-value) [b]	< 0.001
University degree (graduated)	31.11 (7)
Postgraduate studies/Doctorate	46.71 (22.2)
Therapeutic Training (p-value) [b]	0.005
Yes	41.83 (21.83)
No	32.16 (7.22)
Specific Training on Trauma (p-value) [b]	0.772
Yes	35.48 (17.09)
No	36.59 (8.33)
Type of work_Counseling[b]	38.97 (20.24)
p Value	0.073
Type of work_Social Work[b]	32.89 (7.31)
p Value	0.105
Type of work_Humanitarian Work[b]	29.03 (4.18)
p Value	0.002
Type of work_Field Work [b]	33.1 (9.77)
p Value	0.234
Age groups of users (p-value) [a]	< 0.001
Children (1 – 12 years of age) and youth (13 – 17)	28 (2.24)
Young adults (18 – 25)	33.17 (11.18)
Adults (26 – 64) and elderly (65 years of age and above)	31.81 (4.27)

Note. Mean (Std. Deviation) are showen in table. [a]ANOVA, [b]Independent Samples T-test.

Table 6 presents the average scores on the Secondary Traumatic Stress Scale among women service providers of psychosocial support with different sociodemographic and professional characteristics.

The age group of 54 to 67 years old has the highest scores on the Secondary Traumatic Stress Scale (58.33, *SD* = 31.62), however those in the 44 to 53 age range also record high scores (40.89, *SD* = 11.62). Individuals between the ages of 34 and 43 demonstrated substantially lower scores (28.23, *SD* = 3.54), indicating a higher amount of secondary traumatization among older

individuals (p = 0.018). The consideration of marital status is crucial, since women who have divorced are a vulnerable demographic and have a greater level of secondary traumatization (48.21, *SD* = 28.53, p = 0.001).In comparison to women with university education (bachelor's degree), who score lower (31.11, *SD* = 7), p < 0.001, women with postgraduate or doctorate degrees score significantly higher (46.71, *SD* = 22.2). Furthermore, there is a greater degree of secondary traumatization in women who have had therapeutic training (41.83, *SD* = 21.83, p = 0.005), in women who work with younger adults (18 to 25) (33.17, SD = 11.18), and in older persons (26 and above) (31.81, *SD* = 4.27). On the other hand, secondary trauma is less common in women who work in aid programs (29.03, *SD* = 4.18, p = 0.002).

Discussion

The study's findings show a strong correlation between the level of secondary traumatization (ST) and the professional and personal traits of women who offer psychological support. The results indicated that women in helping professions who work with vulnerable groups had a moderate level of secondary traumatization. This conclusion is partly consistent with other research findings (Lee, Gottfried & Bride, 2018; Kindermann et al., 2017; Zerah, 2013).

The results supported the general hypothesis by demonstrating that women in helping professions who offer psychological support to vulnerable populations do, in fact, show a somewhat heightened sensitivity to secondary traumatization. Furthermore, although the moderate correlation varies depending on specific factors, the results also showed a connection between specific socio-demographic factors (age, marital status) and professional characteristics (job role, training) with secondary traumatization, confirming the first hypothesis. Specifically, the emotional state of these professionals was found to be significantly influenced by age, marital status, level of education, and work experience. These findings offer fresh insights unique to this population, while also aligning with earlier studies (Kindermann et al., 2017; Lalonde & Dauphin, 2016).

Research has historically shown, as we have demonstrated, that men and women in professions that deal with traumatized clients have different rates of secondary traumatization. In numerous studies, women have reported experiencing signs of secondary traumatization and emotional weariness at higher rates than men. The aforementioned findings can be attributed to the distinct responsibilities that genders have historically had in society. Women are typically expected to demonstrate higher levels of

emotional engagement and sensitivity, which can lead to emotional weariness.

It is crucial to remember that men were excluded from this study, which makes it hard to compare gender variations in secondary traumatization directly. However, concentrating on women enables a more profound comprehension of the particular difficulties that they encounter in this line of work, because dealing with trauma is seen as an extremely demanding and prolonged process.

There was a greater prevalence of secondary traumatization among older participants, specifically those between the ages of 54 and 67. The research, in contrast to our findings, indicates that younger women may be more vulnerable to secondary traumatization as a result of a lack of training and insufficient experience in their jobs (Kounenou et al., 2023). The cumulative effect of extended stress exposure helps to explain our results in part. This population's older women are more likely to have worked with emotionally draining cases and trauma for extended periods of time, which raises the risk of burnout and subsequent traumatization. This result is consistent with studies showing that long-term social and counseling professionals are more prone to emotional exhaustion and indications of post-traumatic stress disorder.

Older women may also be less able to recuperate from stress and restore their energy, which leaves them more susceptible to the cumulative effects of being exposed to the traumatic experiences of their clients. More investigation is required to determine how workplace support and coping mechanisms can assist professionals in lessening these consequences (Whitfield & Kanter, 2014).

The results of the study show that whilst single women had more severe sleep issues, divorced women reported the highest degrees of emotional exhaustion. Divorced people may endure a combination of stressors that worsens the consequences of secondary traumatization, as they are probably already under stress from their personal circumstances. Conversely, single people could have less social support than their married coworkers, which makes emotional recovery even more difficult. Lack of solid relationships outside of work can exacerbate feelings of loneliness and worsen sleep patterns, both of which can aggravate secondary traumatization. These results are consistent with the work of authors who have studied emotional burnout and shown that those who grow up in unstable families are more likely to experience burnout (Gama et al., 2014; Cañadas-De la Fuente et al., 2018). That being said, it is crucial to note that these data should be interpreted cautiously because they contradict the findings of previous studies.

Given that one would think that a higher education would provide better coping mechanisms, the results indicating that participants with postgraduate education reported higher degrees of emotional exhaustion and stress symptoms may come as a surprise. Higher degree graduates might, nevertheless, be held to higher standards by their employers and deal with more challenging cases in their line of work, both of which can lead to stress. Emotional exhaustion may also be exacerbated in these people by the fact that they may be excessively conscious of professional standards and experience increased pressure to fulfill the demanding requirements of their professions.

It is noteworthy that individuals who received therapeutic training exhibited elevated levels of Secondary Traumatic Stress (STS). This finding could suggest a deeper level of engagement with the emotionally sensitive elements of trauma work and therapy. These results may be explained by a greater exposure to distressing content in professional settings and during training, which could result in heightened emotional engagement and stress. Studies have indicated that professionals who have undergone specialized training in trauma work tend to form more profound emotional bonds with their clients, thereby raising the possibility of recurrent trauma.

These findings show that in order to avoid excessive emotional engagement and burnout, individuals undergoing intense training require extra assistance and supervision.

Those who work in social work or humanitarian roles reported lower levels of emotional stress than counselors. The emotional load of counseling rises because it necessitates a more intense emotional connection and frank discussion of the traumatic experiences of the client. This result is consistent with other studies that have demonstrated that because of their emotional attachment to their clients, counselors and therapists are more likely to exhibit signs of secondary traumatization (Kounenou et al., 2023). Furthermore, compared to dealing with younger populations, working with adult clients is linked to higher levels of secondary traumatization. Adult clients frequently have longer and more complicated trauma histories, which require more intensive work and can elicit deeper emotional responses from professionals.

Conclusion

This research highlights the significance of demographic and professional factors in understanding secondary traumatization among women providing psychosocial support to vulnerable groups. Age, marital status, educational level, and specific training are moderately associated with the emotional well-being of these professionals. The findings indicate the need for additional support for all professionals working in helping professions. Organizations should develop prevention and intervention strategies to mitigate the effects of secondary traumatization and ensure the long-term emotional stability of these specialists.

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Original Scientific Paper

Antisocial Personality Disorder in Offenders: Two Case Studies in the Personal Construct Psychology[1]

Nikola Drndarević[2]

This study explores the subjective worlds of offenders with Antisocial Personality Disorder (ASPD) using Personal Construct Psychology (PCP) and repertory grid methodology to provide an alternative perspective on antisocial behavior. Given the high prevalence of ASPD in correctional settings and its association with elevated risk behaviors and treatment resistance, exploring alternative frameworks may contribute to addressing existing challenges in treatment outcomes. Two case studies were presented, employing content and structural analysis to illustrate the heterogeneity within ASPD and its overlap with other personality disorders. Case 1's personality structure is stable and permeable, defined by dominance and criminogenic constructs that position aggression as an extension of his antisocial role. In contrast, Case 2 is marked by instability between incompatible constructs of cruelty and empathy, generating internal tension that leads to impulsive aggression. Case 1 resembles ASPD with narcissistic traits, while Case 2 suggests ASPD with borderline traits, potentially situating them along primary and secondary psychopathy dimensions. The findings suggest that an integrated approach, combining categorical approach and PCP perspective, offers a more comprehensive understanding of ASPD's complexities. This idiographic study offers

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implications for risk assessments and treatment strategies based on individual ASPD profiles.

Keywords: *Antisocial personality disorder, Offenders, Personal construct Psychology, Risk assessment, Treatment*

Introduction

Correctional staff, particularly those in treatment and security roles, often manage offenders whose challenges extend beyond criminal behavior. Many of these individuals exhibit persistent rule-breaking, impulsivity, and violence, which strain correctional resources and complicate management (Međedović et al., 2024). Among these offenders, Antisocial Personality Disorder (ASPD) is especially prevalent and frequently associated with treatment resistance, a high risk of institutional misconduct, and lifelong antisocial behavior (Black et al., 2010). Despite efforts to develop effective treatments, ASPD remains a challenging diagnosis, often manifesting with complex, overlapping symptoms of other mental health issues (Meloy & Yakeley, 2014).

Antisocial Personality Disorder and Its Complex Presentation

ASPD is defined by a longstanding disregard for the rights of others, with behaviors such as deceitfulness, recklessness, impulsivity, aggression, and a lack of remorse. The diagnosis requires evidence of conduct disorder before age 15, with traits persisting into adulthood (APA, 2022). Childhood Attention-Deficit Hyperactivity Disorder (ADHD) is a significant risk factor, as it often progresses to conduct disorder and, later, to ASPD, leading to substance abuse and potential incarceration (Young & Thome, 2011).

Historically, ASPD has been a source of diagnostic complexity due to its conceptual overlap with psychopathy and other Cluster B personality disorders, including Narcissistic (NPD) and Borderline Personality Disorder (BPD) (Kernberg, 1989; Yildirim & Derksen, 2015). The Diagnostic and Statistical Manual of Mental Disorders (DSM) has progressively shifted ASPD criteria from personality-focused concepts to observable antisocial behaviors. This shift has led to conflating psychopathy, sociopathy, and dyssocial personality disorder, which has further blurred distinctions and introduced diagnostic confusion.

An attempt to address these issues appears in DSM-5-TR (APA, 2022), where Section III proposes a dimensional approach, incorporating

psychopathic traits such as coldheartedness, impulsivity, meanness, and disinhibition. However, this dimensional model remains relegated to an appendix, while the categorical approach persists in the main diagnostic section, limiting the dimensional framework's impact.

Contemporary models propose that ASPD may occupy a position along a broader psychopathy spectrum, where primary and secondary psychopathy represent variations in emotional deficit and self-control (Yildirim & Derksen, 2015). This continuum-based perspective acknowledges the complex presentation of ASPD and the variability of antisocial behavior across individuals. Importantly, criminal behavior is not central to all forms of psychopathy, underscoring the need for different assessment frameworks in forensic settings (Clark, 2004; Međedović et al., 2015).

Alternative Perspectives: Personal Construct Psychology

While the DSM framework provides essential diagnostic criteria, other theoretical approaches, such as Personal Construct Psychology (PCP), offer valuable insights into the subjective worlds of offenders (Horley, 2003; Winter, 2009). Developed by George Kelly (1991), PCP views individuals as 'personal scientists,' actively constructing theories to navigate their world. This approach emphasizes the importance of understanding an individual's unique meaning system, rather than relying solely on static diagnostic categories.

PCP introduces the concept of 'personal constructs', which are individualized 'theories' people use to organize and predict experiences. These constructs vary in complexity, permeability, and range, influencing how individuals interpret and respond to their environment. When constructs include theories about others, are essential for relating to others, and are central to one's identity, they are known as 'core role constructs.' In this framework, social positioning and identity stability are crucial; threats to one's core role can destabilize a sense of self and lead to disconnection and guilt.

Antisocial and Psychopathic Core Roles

Kelly (1991) proposed two distinct core roles that may be especially relevant in understanding offenders: the antisocial and psychopathic roles. The antisocial role is shaped primarily by how others perceive the individual's threatening behavior. In response, society often punishes and ostracizes these individuals, aiming to provoke guilt through exclusion.

However, when a person is repeatedly exiled from the community, they may come to embrace this outsider identity permanently:

> Sometimes the punished person *turns the tables on the punishing people*. He construes his own society. He moves towards *establishing a core role for himself which includes the very behaviour which others have found threatening*. Now he can be threatened […] by the prospect of losing his status as an 'evildoer'. In a very real sense that is the loss which would make him feel guilty. He may be threatened by the presence of a person who is virtuous in the way he used to be virtuous. He may seek to punish such a person in order to make it clear to himself that the virtuous person is truly different from himself and that he is in no danger of slipping back into the half-familiar ways of virtue (p. 373).

In such cases, antisocial individuals construct the self around nonconformity, positioning themselves in opposition to societal norms. Rather than seeking new roles or ways of relating to society, they maintain a role firmly anchored in defiance. This process involves 'slot-rattling', or adopting the extreme contrast pole of social expectations to reinforce their core role.

> In contrast, Kelly (1991) described the psychopathic role as one rooted in early dependence on others for survival, where others are perceived primarily as resources to fulfill needs. As development progresses, most individuals form complex role constructs to facilitate reciprocal (role) relationships. However, in the psychopathic role, this development stalls at a stage where others remain objects for fulfilling personal needs:
>
> [A] child depends upon a relationship with his parents which is based upon a *construction of them as bovine creatures*. He sees them as animals which are concerned primarily with giving milk and making money. He writes his role accordingly. He validates. He grows up with his *core role structured in relationship to such presumed people*. When people try to make him feel guilty by pointing out that he is selfish, cruel, or immoral, he may readily agree that he is and concede that it would be nice if he were different. However, he does not experience guilt, for these interpretations are not incompatible with his core role structure […] His psychiatrist may call him a '*psychopathic personality'* (p. 371, my *italics*).

From a PCP perspective, individuals are not inherently immune to guilt, even those with a 'psychopathic personality.' However, guilt only arises when they begin to view others as people with needs of their own. In the

psychopathic construct, guilt does not stem from treating 'bovine creatures' in a selfish or cruel manner; rather, guilt could emerge if they were to view these individuals empathetically. In this reversed interpersonal world it would seem that, 'the antisocial person's reality becomes the typical person's nightmare, while the normal person's reality is the psychopath's nightmare' (Kernberg, 1989, p. 569).

Impulsivity

In contrast to the common view of impulsivity as a lack of control, Kelly reinterprets it as an attempt to regain control through an accelerated decision-making process. This cycle consists of three stages: circumspection, where an individual scans constructs for relevance; preemption, where a single construct is selected; and control, where the individual makes a definitive choice and acts. Impulsivity emerges when the individual skips the initial circumspection, bypassing careful consideration in favor of immediate action.

Remaining in this cycle for too long, however, can lead to indecision and increased anxiety. For individuals in distressing or humiliating situations, even impulsive decisions may feel preferable to prolonged indecision, as they restore a semblance of control (Drndarević et al., 2021).

Research indicates that offenders often have polarized and low-complexity cognitive systems (Horley, 2003; Houston, 1997). When a construct becomes invalidated or fails to explain available data, unconstructed elements can increase anxiety. In these cognitively simplistic and tightly interwoven systems, anxiety is often more intense. Rather than adapting their constructs, individuals may respond by enforcing existing constructs in a hostile manner to regain validation (Cummings, 2006). This approach reduces anxiety, but it bypasses the creative potential anxiety offers for developing new constructs, instead maintaining rigid interpretations of reality.

The present study

This study aims to explore the subjective worlds of offenders with ASPD using the PCP framework and repertory grid methodology to examine the personal constructs that shape antisocial behaviors (Kelly, 1991; Fransella et al., 2004). To the authors' knowledge, this approach has not previously been applied to offenders with ASPD. Given the high prevalence of ASPD in correctional settings and the limited success of traditional treatments, exploring alternative perspectives may offer valuable insights for risk assessment and intervention strategies (Kendall et al., 2009; Meloy & Yakeley, 2014).

Through two case studies, this research illustrates the heterogeneity within ASPD and its overlap with other disorders, with a particular focus on the personal constructs that shape how individuals interpret their experiences. By combining structural and content analysis, this study aims to provide an alternative understanding of ASPD.

Method

Participants and procedure

The two case studies outlined are derived from doctoral research within the PrisonLIFE project (Milićević et al., 2024), for which approval was obtained from both the Ethics Committee of the University of Belgrade and the Institute of Criminological and Sociological Research. The data were collected in the Serbian correctional facility of Sremska Mitrovica in May 2024.

Two out of ten cases were selected to showcase variability in ASPD while maintaining similarities in age, balancing representativeness with methodological feasibility. This approach allowed for a focused in-depth analysis of distinct presentations within the disorder without the confounding influence of age-related factors.

The main inclusion criterion was an ASPD diagnosis, with participants selected with the help of prison personnel and the Mini Neuropsychiatric Interview. Participation was voluntary; all participants signed an informed consent form. Time spent completing the instruments with each participant ranged from 60 to 120 minutes. The procedure consisted of completing two interviews with the participants.

Instruments

Mini Neuropsychiatric Interview (MINI). Offenders were administered the MINI (7.0.2 version; Sheehan et al., 1998), a fully structured instrument used to assess the 17 most common psychiatric disorders (e.g. ASPD, Substance Use Disorder, Depression, Psychotic Disorder). The MINI was employed as a brief diagnostic tool to screen for ASPD and possible comorbidities.

Repertory grid. The repertory grid technique was applied, representing a matrix of interrelated constructs (Fransella et al., 2004; Kelly, 1991; Winter, 2013). Columns consist of previously elicited figures, while rows consist of both elicited and fixed constructs. Participants were asked to rate each figure on a scale of 1-7, representing a continuum of the construct poles, where 1 represents the emergent pole and 7 the implicit pole (see Appendix).

Each participant was asked to provide the first names of eight people who currently play an important role in their lives. Parents, siblings, friends, spouses, partners, and employers were suggested as possible figures. Certain restrictions applied. First, the participant must know the person for at least six months, and the person should be regarded as currently playing an important role in their life (for better or for worse). Second, the person themselves are part of the figures, specifically their construing of themselves (present, future, and ideal).

The main method of construct elicitation involves using triads of figures. Figures are compared to each other in search of a construct. Applying triads is the essence of Kelly's definition of a construct (A is in some way similar to B while at the same time different from C). The constructs are generated by asking a series of questions: 'We are interested in understanding you and these people who play an important role in your life. Now, think about these two people for a moment: Yourself (person's name), and (person's name). Is there some important way in which these two people are alike or different from each other?'. This process is repeated until the person can no longer generate more constructs or they begin to repeat. Moreover, some constructs were used as previously fixed (e.g. anger), but their idiosyncratic meaning was elicited by uncovering the opposite (implicit) pole for each individual. Two more constructs were used as fixed: 'blaming myself-blaming others' and 'impulsiveness-inhibitedness' (acting without thinking—thinking without acting).

Analysis

Both case studies were analyzed using a combination of content and structural analysis (Fransella et al., 2004). The content analysis was used for the formulation of personal theories of each participant based on clinical assessment guiding principles through the PCP framework (cf. Landfield & Epting, 1987). The structural indices and visual representation of the grid data were done using the Open Rep Grid[3] package (Heckmann, 2023) in the R program.

The first structural index is principal components analysis, which can be used to plot the two-dimensional relationship between elements and constructs. In addition to visually representing the data, the Percentage of Variance Accounted for by the First Factor (PVAFF) is used as an index of cognitive complexity. When a single component explains much of the variation in the grid, cognitive complexity is considered low. The intensity

[3] https://docs.openrepgrid.org/index.html

index, a second index, is used as a measure of construct linkage. The score reflects the degree of organization of the construct system. Lower intensity indicates a loosening of the system. Finally, implicative dilemmas and imbalanced triads are closely related to the notion of conflict. Both arise when a desired change in one construct is associated with an undesired implication in another construct.

Results and discussion

Case 1 – Stable antisocial core role

Initial presentation

A 28-year-old male offender with a primary school education and an 8-year sentence for theft and drug offenses. He has a history of juvenile delinquency and detention, is currently in a relationship, and has no children. Physically, he is of shorter stature but muscular build. During the interview, he gave the impression of being very outgoing, cheerful, open, and spontaneous in conversation. His conversation and non-verbal gestures were vivid and fast-paced.

Results of the MINI interview

Besides ASPD, the MINI interview reported no psychological disorders. The participant indicated having an ADHD diagnosis (the MINI does not screen for ADHD), which is an important prognostic factor for the later development of ASPD and potential incarceration (APA, 2022; Black et al., 2010). He also reported a history of substance abuse, specifically with amphetamines. The choice of substance is curious, given the calming effects of amphetamines on individuals with ADHD (Cortese et al., 2018).

Results of repertory grid

Description of functioning

Stable system. Contentment and euphoria.

The core constructs of Case 1 account for the majority of variance in the data, represented graphically in Figure 1. Dimension 1 on the x-axis explains 66.4% of the variance, while Dimension 2 on the y-axis accounts for 16%. The concentration of variance within a few dimensions suggests a monolithic structure with low cognitive complexity and high interrelatedness of constructs. This finding aligns with prior research suggesting lower cognitive complexity among offenders (Houston, 1997). Further supporting this interpretation is the presence of black-and-white thinking, inferred from the extremity of his ratings (see Appendix). A

monolithic, polarized structure implies tightly organized constructs, which produce clear yet rigid predictions that are easily invalidated. In such systems, invalidation easily leads to anxiety. From this perspective, felt anger leading to hostile and impulsive actions to regain control and alleviate anxiety can easily be explained in such systems—dynamics that are not exclusive to offenders (Cummings, 2006; McCoy, 1981).

However, this pattern does not fully apply in this case. According to Kelly (1991), individuals with hostile tendencies, who manipulate reality to conform to their constructs, usually experience incongruities in self-construal. No such discrepancies appear in this case; his perceptions of his present, future, and ideal selves (Figure 1) are aligned, suggesting he lives in harmony with his ideal self. His contentment, evident in the interview, instead indicates a permeable core role resilient to various stressors, including repeated incarceration.

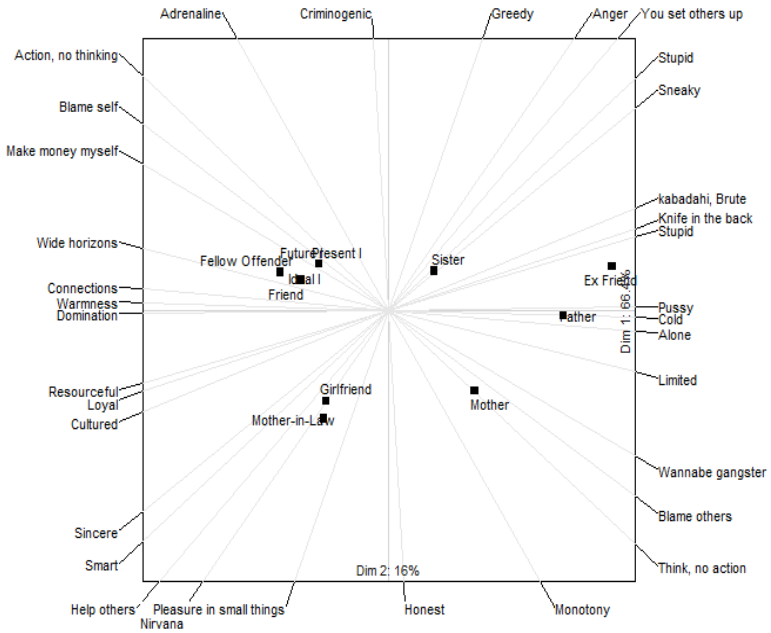

Figure 1. *Principal components analysis (varimax rotation) of Case 1. Antisocial (criminal) core role*

His primary dimension for differentiating people seems to be 'Domination-Pussy'. Individuals on the dominant side are those who 'make money,' are 'smart' and 'resourceful,' possess 'warmth,' and maintain 'connections.' In

contrast, those on the opposite side are ‘wannabe gangsters,’ perceived as ‘stupid,’ ‘cold,’ and ‘alone.’

His secondary dimension, ‘Criminogenic-Honest,’ appears to serve as a mechanism for validating his primary core construct. Through criminogenic activities, he enters a world characterized by ‘adrenaline,’ ‘greed,’ and ‘setting others up.’ Without these activities, he would likely be positioned on the threatening pole of his primary construct.

This dynamic is further reflected in his expressed fascination with the criminal lifestyle during the interview. He remarked on his low socio-economic background, which may highlight the importance he places on domination and financial success as an escape from feelings of humiliation and inadequacy. In his view, honest individuals from his background do not achieve much. This could mark the point where, as Kelly suggested, he ‘turned the tables’ on society, constructing his core role in the opposite direction.

For him, honesty feels unrewarding, leaving him feeling submissive, unintelligent, and incapable of making money, blaming others for his circumstances. He even remarked on my research, questioning who would invest effort without substantial reward—a comment likely stemming from the connection he perceives between honesty and financial failure. In his cognitive system, honesty and wealth are incompatible (closeness of ‘honesty’ and ‘pleasure in small things’), so he reversed his construct, embracing criminogenic behavior as the preferred pole (‘criminogenic’ and ‘greedy’). Feelings of guilt would follow the same trajectory, now emerging when he is construed as ‘Honest.’ It also feels threatening for him to see himself as a ‘Pussy,’ unable to make money.

A notable aspect of his construct system is the intertwining of domination with warmth and connectedness. For him, warmth and connection are achieved only through exerting control and maintaining superiority. Losing dominance equates to coldness and isolation, highlighting the fundamental belief that his value and sense of worth are dependent on his ability to dominate. This may also explain the performative nature of his interactions, where his charm and playfulness are tools to assert control, rather than genuine connection. When he experiences coldness, it likely triggers deeper feelings of anger and frustration, as it challenges his sense of superiority. Coldness from others, especially betrayal, is intensely perceived as a threat to his dominance and a personal affront, which he expresses through disdain and hostility—referring to a former friend as ‘sneaky’ and ‘stupid,’ with the betrayal likened to a ‘knife in the back.’

In this worldview, loyalty may be intrinsically tied to respect and submission, reinforcing his need for others to acknowledge his dominance.

Although his anger may seem retributive (closeness to 'setting others up'), it is ultimately aimed at preserving his sense of dominance and preventing any threat to his dominance. His choice of a dishonest, criminal role seems to have led to estrangement from his family. He now perceives himself as more similar to his criminal friends, girlfriend, and even his mother-in-law than to his family, and most distant from his betraying friend. There is also an interesting relationship with the two women in his life—his girlfriend and mother-in-law—who seem to accept and validate his criminal role, in contrast to his family. He seems to have found validation both outside the prison (e.g. friend, girlfriend) and within (e.g. fellow offender).

For him, the criminogenic path appears to provide significant rewards, as evidenced by his non-discriminating roles of present, future, and ideal selves. Even imprisonment does not invalidate his core role; he continues to elaborate it even while incarcerated. To him, a fulfilled life is achieved through domination, which is pursued through criminal activities. In contrast, honesty is associated with isolation and bitterness—making his choice of path clear. This may have evolved into a life role as well.

These two core frames seem to constitute his core antisocial role. The criminogenic path offers greater elaborative choice for his agency, channelled into domination. He seems to employ both aggression and hostility in elaborating his core role, which may be threatening to other people (Drndarević, 2021). And this role regulates his processes and provides order in his world.

Dilated field and unmodulated spontaneous elaboration.

He appears to be contained within a manic phase. The excitement he displays, along with the rapid shifting between constructs during the interview and a possible ADHD diagnosis, all point to unmodulated, spontaneous elaboration. He actively expands his interpretative field, and in Kelly's terms, this aggressive elaboration—similar to that seen in mania—involves a short-sighted testing of reality. This is evident in the lack of differentiation between his present and future selves, which appear almost completely undifferentiated.

The maintenance of his expanded cognitive field appears to stem from his broad and permeable core constructs, especially in interpersonal realms. Regardless of his environment, he seems to adapt readily—finding and bending rules to suit his needs. It is as if he has never encountered significant invalidation capable of disrupting his seemingly perpetual manic, expansive state. His cognitive structure seems both comprehensive and adaptable enough to be imposed upon any event. Each interaction

becomes either a business opportunity or a novel experience, with even the prison setting unable to challenge or undermine his core role.
If his cognitive structure were to become fallible—such as through the decline of physical power with age—the manic phase would likely transition into a depressive one. This shift would manifest as a desperate attempt to constrain the previously expanded field, which currently lacks a stable foundation. However, at present, there is no indication that such a transition is imminent.

Treatment prospects

The absence of implicative dilemmas (Table 1), combined with a consistently positive self-construal and identical constructions of his current, future, and ideal self (see Appendix), suggests that he does not perceive a need for personal change at this time. As such, resocialization efforts focused on personality transformation are unlikely to be effective. At best, such interventions might provoke feelings of threat or guilt. This lack of perceived need for change may explain why altering behavior is often so difficult for individuals like him. From a PCP perspective, there is no internal need for his system to evolve. This perspective sheds light on why many professionals remain pessimistic about treating such individuals, and why interventions with them often yield limited results.

Risk assessment

Inferences drawn from the repertory grid suggest that his psychological system is stable, with little indication of impulsiveness. The threat of violence appears low, but remains possible. While he associates 'Cultured' with 'Domination' and 'Brute' with 'Pussy,' his anger seems to have retributive characteristics ('setting others up'), and be located on the 'Criminogenic' pole. Two key areas warrant attention: his Kelian aggression and the imposition of criminogenic needs in a hostile manner.
First, although Kelian aggression bears more resemblence to adventure and active field elaboration, than to destruction, it can still be threatening to other people (Drndarević, 2021). His unmodulated spontaneous elaboration, using his impulsivity to validate his antisocial role, may provoke reactions both from other offenders and prison staff. Second, his criminogenic needs add complexity to his aggression. Failing to engage in dishonest, anti-law activities may push him toward the threatening side of his core construct, as his system generates criminogenic needs that seek fulfillment, even if not necessarily through violence.

Table 1.
Structural indices for Case 1 and Case 2 construct systems

	Case 1 – stable structure	Case 2 – unstable structure
PVAFF	0.66	0.32
Intensity index	0.43	0.18
Implicative dilemmas	0	3
Conflicts (Imbalanced triads)	11.2%	33.6%

Notes. PVAFF: Percentage of Variance Accounted for by the First Factor.

Case 2 – Unstable antisocial core role

Initial presentation

A 23-year-old male offender, a secondary school graduate, currently serving a sentence for multiple counts of robbery and banditry, presented in a visibly depressive state during the interview. His movements were lethargic, his eyes half-closed, and his speech slow. His non-verbal communication conveyed a mixture of sadness and anger, creating an almost tangible sense of heaviness and distress throughout the interaction.

Results from the MINI interview

MINI registered psychological problems in several areas. In addition to the ASPD, he reported possible hypomanic episodes and depressive disorder with marked feelings of guilt bordering on opsessive thoughts. In particular, he mentioned the moment of arrest, the look in his mother's eyes, bad things he had done to others, hatred he felt. Furthermore, he disclosed a history of substance abuse, including marijuana, amphetamines, cocaine, and heroin. He claimed to have been drug-free for the past year, except for prescribed antidepressants (Zoloft) taken while in prison.

Results from the repertory grid
Description of functioning

System instability.
Anxiety and loss of prediction

The most striking finding was the level of confusion and anxiety within his construct system. His two core construct dimensions explained just over 50% of the variance (Figure 2), suggesting a limited capacity for his personal theories to structure and make sense of his world. According to Kelly's fundamental postulate, if a person forms theories to better anticipate events, the lack of clarity in his construing indicates that these theories are insufficient in providing insight into the events around him, particularly regarding important people in his life. When events cannot be adequately understood or predicted, it leaves the system vulnerable to anxiety.

Interestingly, his approach to managing anxiety does not seem to involve constricting his construct system, as his depressive state might suggest. Constriction, a common coping strategy to reduce anxiety, involves narrowing the range of constructs to eliminate incompatible elements, which would typically be reflected by a high number of midpoint ratings on the grid. However, his limited use of midpoint ratings can largely be attributed to the inapplicability of certain constructs to specific elements (e.g., a 10-year-old sister or a father who has been absent for many years). The anxiety resulting from the system's insufficient predictive power suggests one of two possibilities: either the system is experiencing frequent slot-rattling due to instability, or it is overly loose. While there are signs of looseness in the system (e.g., an Intensity Index of 0.18), this variability in predictions does not seem to shield him from anxiety. On the contrary, he appears to manage his anxiety by tightening his system, as evidenced by the levels of anger and impulsivity in his behavior. This instability may perpetuate impulsive actions, followed by intense feelings of guilt, possibly indicating a true disorder. His substance abuse appears to play a role in this vicious cycle, temporarily alleviating anxiety but further destabilizing the system in the long term.

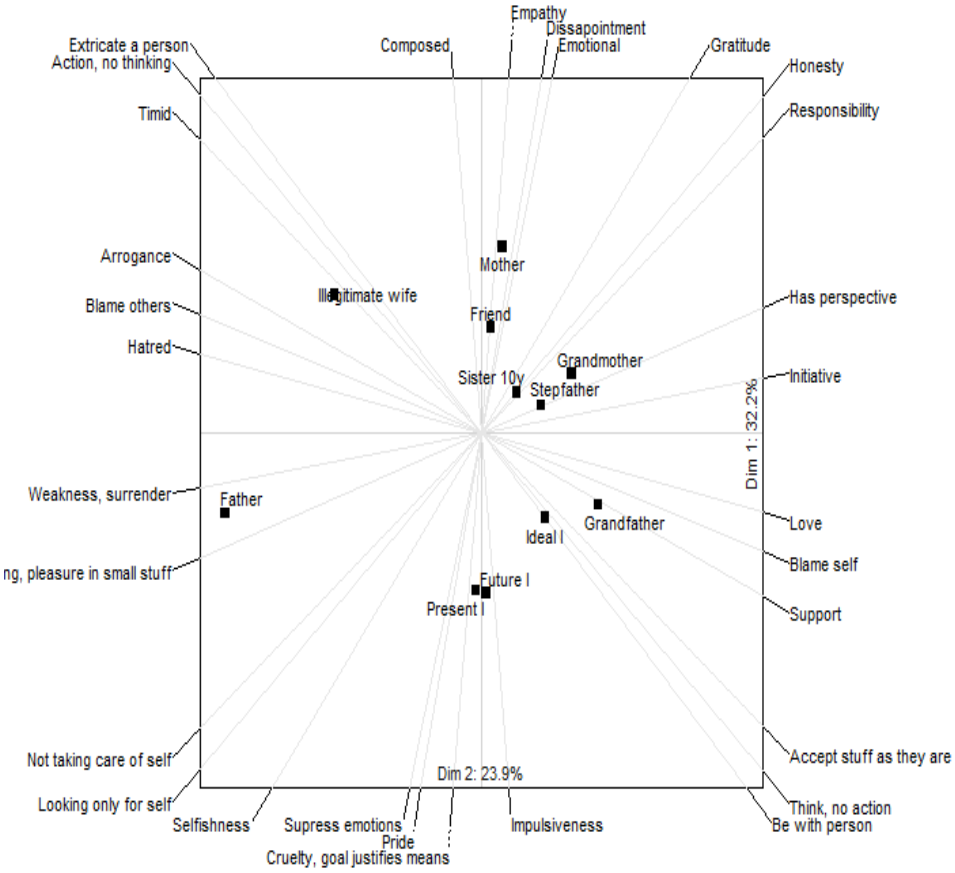

Figure 2. *Principal components analysis of Case 2.*

Shifting between cruelty and empathy role

Another way to deal with anxiety is to be impulsive. Impulsivity, as a form of control, seems to be his preferred method for managing anxiety. His impulsive behavior often manifests as violence. He was incarcerated for violent offenses and banditry and continues to display violent tendencies within prison, accumulating numerous disciplinary infractions and placements in high-security wards. Moreover, he construes himself as impulsive, which aligns with his preferred pole (see Appendix).

Impulsivity and violence are closely linked to 'Cruelty,' which seems to be his primary core construct. For him, cruelty serves an instrumental purpose—he describes it as 'the end justifies the means'—and it is associated with 'Suppressing emotions' and 'Selfishness.' He rationalizes this construct by referencing his upbringing in poverty and abandonment by his father. However, he also grew up with his mother and grandparents, from whom he received love and support. This contrasting experience may have validated the opposite 'Empathy' construct and contributed to the development of his other core constructs, such as 'Honesty' and 'Responsibility.' Together, these three constructs suggest a fragmented empathic role, which later causes guilt when he acts cruelly. He seems unable to reconcile the abandonment by his father with the love he received from his grandparents.

This instance, as reflected in the content of his constructs, may serve as an example of structural inadequacy within his construct system. The dynamic instability of his system suggests slot-rattling between constructs such as cruelty and empathy, as well as between responsibility and neglecting self-care through destructive behavior. The presence of conflicts and implicative dilemmas in his construct system further supports this interpretation (Table 1).

His slot-rattling is evident in the tension between his cruel, selfish fragment and his empathy fragment. When he acts in a cruel and selfish manner, he experiences guilt and disconnection from his ideal self, marked by sadness and guilt. On the other hand, when he attempts to embrace honesty and responsibility, his needs are not met, leading him to feel as though he loses his sense of self. This conflict reflects the instability in his construct system, where shifts between cruelty, selfishness, and empathy prevent a stable self-construal.

Amid the dilemmas and anxiety disrupting his world, drugs provide much-needed, albeit temporary, relief. From the perspective of his construct system, anxiety is most effectively regulated through selfishness and substance use. However, this approach does nothing to resolve the underlying anxiety, leaving the system burdened with guilt (dislodging

him from empathy, love, and pride) and possibly escalating anxiety due to the drug-induced disorganization of his system. This disorganization may perpetuate impulsive actions, followed by feelings of guilt, suggesting the presence of a deeper disorder. His substance abuse appears to play a central role in a vicious cycle, offering temporary relief but ultimately contributing to the deterioration of his construct system.

Childlike constructions in both content and structure

There are several indicators of childlike construings patterns within his system. First, when asked to construe anger, he escalates it to the more extreme emotion of hatred and contrasts it with love. This tendency towards extremity is also evident in the content of his construct 'being with someone-extricating someone'. This construct is especially pertinent when considering the context of substance abuse. Additionally, he appears to rely heavily on the opinions of others, which is reflected in both his feelings of guilt and his use of the construct 'disappointment-pride'. This construct reflects how he perceives the views of significant others, either as a source of pride or disappointment. Furthermore, many of his constructs are self-focused, such as 'not looking after oneself,' 'looking after oneself,' and 'selfishness.'

Structurally, the extremity of his ratings suggests black-and-white thinking, while the overall indecisiveness of his system points to developmental stagnation. His childlike constructs reflect a Kelian 'psychopathic personality,' marked by developmental arrest at the stage of dependency in certain aspects of his system.

Treatment prospects

The impetus for change, driven by structural transitions, appears to stem primarily from anxiety. Currently, this anxiety is managed through a dysfunctional system dynamic that harms both himself and others. His indecisiveness reflects the tension within his 'cruel-empathic' roles, where the disappointment from his mother, alongside the love and support from his grandparents and sister, act as deterrents against extensive self-destruction. On the other hand, he appears to have profound personal needs but lacks a adequate figure upon whom he can depend.

A potential solution lies in the development of a superordinate construct that integrates both his empathic role and personal needs on one side, with cruelty and destructive behavior on the other. Achieving this would require him to slow down his impulsive decision-making and reduce his need for control, though this comes with significant risks, as it would expose his system to heightened anxiety. Such a comprehensive

reconstruction of his faulty core structure would necessitate an environment of extreme dependency—similar to an infantile state. This may explain why drug dependency often requires a setting of intensive, all-around care, which a correctional facility is typically ill-equipped to provide.

In this context, the treatment officer could potentially assume some of these dependency roles, while his 'cruelty' construct could be bound and made impermeable to the prison setting. His substance abuse could be managed with appropriate psychopharmacological interventions. Lastly, his treatment could draw upon the potential resources of his mother, sister, and grandparents – his positive role models who can provide support in this transition.

Risk assessment

This individual poses a significant risk both inside and outside the prison setting. His cycles of anxiety, which he impulsively regulates through selfish and cruel behaviors to meet his needs, are compounded by recurring feelings of guilt, creating an extremely volatile dynamic. His history of violence and misconduct, both within and beyond prison walls, is closely tied to his disorganized construct system. Violent outbursts—whether directed at others (violence) or himself (guilt)—seem to function as attempts to regain a sense of clarity.

During violent phases, he seems disconnected from others—marked by selfishness, emotional suppression, and impulsivity. Conversely, during phases of guilt, he loses sight of himself, becoming overwhelmed by emotions and feelings of disappointment. Substance abuse only exacerbates this disorganization, reinforcing the disorder and contributing to a potential further deterioration of his psychological state.

General discussion

The overrepresentation of individuals with ASPD in prison populations, alongside therapeutic pessmism about the effectiveness of their treatment and potential for reducing recidivism, highlights the need for supplementing diagnostic approaches (Meloy & Yakeley, 2014). To address this, the current research aimed to explore the subjective worlds of offenders with ASPD using a personal construct perspective and the repertory grid method. The study presented two case analyses, each showcasing the variability in personality constructs and behavioral manifestations associated with this diagnosis.

In discussing Case 1, there are clear parallels with Kernberg's (1989) descriptions of narcissistic and antisocial personality traits. The case presents a core structure of grandiosity, power-seeking, and an emotional detachment from societal norms, alongside a capacity to persistently ignore past errors and consequences. Notably, his identical, positive construal of his present and future self—despite repeated incarcerations including juvenile detention—suggests a dampened emotional response that minimizes intense reactions to future consequences, particularly anxiety and sadness. This highlights his consistent disregard for future consequences—a pattern echoing both antisocial and narcissistic traits.

His impulsivity is primarily driven by hedonistic urges, as evidenced by his frequent engagement in thrill-seeking behaviors, including descriptions during the interview of drug abuse, dominant sex, fighting, and scamming the system. These behaviors indicate low self-control disregard for others. His dual presentation of ASPD and NPD comorbidity, marked by an inability to delay gratification, hints at a possible form of disinhibited primary or detached secondary psychopathy (Yildirim & Derksen, 2015), where affective responses are flat, and concern for others' well-being is minimal.

This subject's dominant self-construal further emphasizes an overt need for control and omnipotence, reinforced by a fascination with criminality and interpersonal dominance. His core construct "Domination-Pussy" suggests a worldview shaped by aggression and sexual power dynamics, reinforcing his coercive approach to relationships and interactions. This profile exhibits similarities to a stable, narcissistically fueled engagement with the world, where interpersonal aggression is often instrumentalized—to either attain personal rewards or preserve social status, further underscoring his orientation toward a power-driven, antisocial identity.

The pathway toward ASPD in this case appears delineated, at least partly, in childhood ADHD, a significant predictor of conduct disorder and ASPD (Young & Thome, 2011). His identical view of his present and ideal self may also contribute to treatment resistance, as this core role embodies a stable and permeable structure, leaving minimal motivation for change (Kendall et al., 2009).

Case 2 illustrates an unstable core, shifting between unintegrated psychopathy and empathy fragments. While ASPD typically involves emotional detachment and consistent aggression, this individual's fluctuating self-construal and emotional instability reflect the "stable instability" characteristic of borderline traits (Miletic, 2024). This instability, alongside an inability to integrate conflicting roles, suggests

the profile of unstable secondary psychopathy—a blend of ASPD and BPD traits (Yildirim & Derksen, 2015).

Individuals with this profile often display externalizing symptoms, emotional instability, and chronic anxiety, alongside aggression directed both inward and outward (Yildirim & Derksen, 2015). They frequently experience pervasive feelings of rejection, criticism, or humiliation, which may lead to self-medication with alcohol, drugs, or other substances. Our observations align with these patterns. His impulsivity appears driven by emotional dysregulation and internal conflict, leading to outbursts of anger and violence, particularly in response to events that exacerbate his neurotic conflicts.

Research highlights the role of significant environmental insult, such as extreme abuse, neglect, or abandonment, as a condition for secondary psychopathy to develop (Yildirim & Derksen, 2015). His father's abandonment during formative years may align with this finding, potentially disrupting his mentalization processes (Protić, 2020). The ASPD-BPD comorbidity complicates the treatment landscape; however, the Case 2 may actually have greater therapeutic potential due to his recognition of emotional conflict and capacity for guilt.

Relying solely on the ASPD category would be insufficient to capture the heterogeneous presentation observed in these cases. High levels of externalizing symptoms (e.g., low self-control) combined with varying degrees of affect regulation highlight how these individuals transcend categorical boundaries between ASPD, NPD, and BPD, potentially positioning them along a continuum between primary and secondary psychopathy.

Limitations and future directions

From the PCP perspective, future research could advance in several key directions. First, the exploration of ASPD outlined in this study would benefit from empirical testing of its proposed hypotheses. Given that PCP's focus is therapeutic intervention, a longitudinal design could be particularly valuable in examining how different psychological profiles within ASPD respond to varied treatment approaches. This would facilitate the development of targeted interventions that cater to the distinct needs of stable versus unstable ASPD presentations. Second, although these two cases highlight the heterogeneity within ASPD, they do not represent the full spectrum of the disorder. Expanding research to encompass a wider range of ASPD presentation (e.g., comorbidities with controlled primary psychopathy or somatoform disorders) would be

essential for understanding the stability and variability of ASPD traits across different life stages and treatment phases.

The individualistic and interpretative nature of PCP, while central to its theoretical framework, poses challenges in research. This approach is based on the principle that data is subject to continuous construction and reconstruction, suggesting that interpretations have a limited lifespan and must be revisited over time. This does not imply complete relativism or the absence of useful guidelines but points to the expiration date of theoretical constructs. Moreover, a noted limitation of PCP is its reliance on the individual's willingness to change, avoiding imposed intervention. This 'credulity limit' in offender populations (Winter, 2009) presents an avenue for further exploration into strategies that extend beyond this inherent constraint.

The current study has generated a significant volume of data using the repertory grid methodology, with PCP providing a robust framework for content and structured analyses. Integrating diagnostic categories, contemporary research, and alternative perspectives such as PCP, enhances the reliability of findings and supports a more comprehensive understanding of ASPD, highlighting the benefits of an integrative research approach.

Appendix: Repertory grids of two case studies

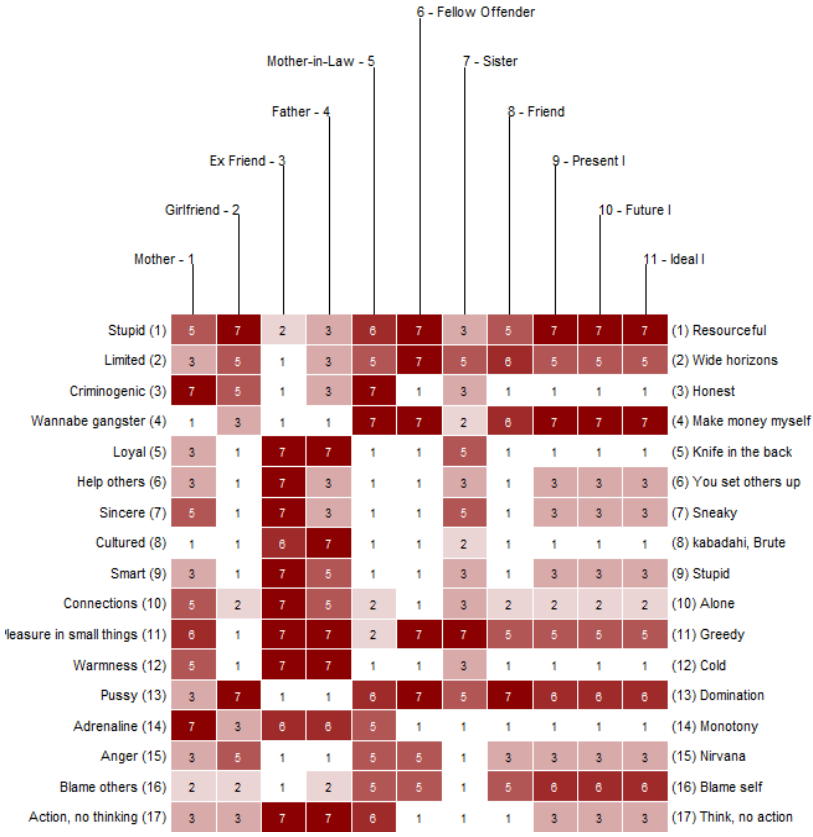

Figure 3. *Repertory grid of Case 1.*

Figure 4. *Repertory grid of Case 2.*

Acknowledgement

The author would like to thank Dr Milena Milićević, Zoran Mijailović, Dragana Nedeljković, and the correctional facility of Sremska Mitrovica for their support of the research, as well as the offenders who participated in the study.

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Review Paper

The Opportunities for Empirical Study of Religiosity within the Prison Population: A Review of Selected Empirical Research[1]

Teodora Gojković[2]

Historically, the idea of establishing the first penitentiary institutions in the 18th century was originally religious in nature. It was believed at that time that long-term isolation of offenders, combined with continuous and deep conversations with clergy – prison chaplains – would lead to their repentance and sincere regret for the sins they had committed. In a broader sense, religion in prison and prison in religion is not a new phenomenon, although it may appear so, since research on this topic is rare, and most of it dates back to the end of the last century. Based on findings about the inverse relationship between religion and crime, the main aim of this paper is to present the results of some studies that confirm the positive impact of religion on convicted individuals serving prison sentences. These studies provide evidence of religion's beneficial effects on the mental health of inmates; its positive influence on their adaptation to prison conditions; the impact of religion, spiritual leaders, and participation in religious programs in prisons on gaining social support and adopting prosocial values; its effect on preparing convicted individuals for life after release, i.e., their rehabilitation and reintegration; and on the quality of life in prisons, among other things. The paper is structured to first present the explanatory framework for research on religion in prisons; then it provides a review of some empirical studies on religion in U.S. prisons and two studies conducted in Serbia.

Although studies reporting negative findings regarding religious practice in prison conditions are even rarer, it is concluded that future research on this topic could examine whether religion might also produce negative effects on convicted individuals serving prison sentences, such as

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antisocial behavior, extrinsic forms of religiosity, mental disorders, the spread of informal prison systems, and so on.

Keywords: *Religion, prisons, convicted persons, religious programs in prison, prison chaplains*

Introduction

Throughout the long history of penitentiary institutions, religion has been of particular importance in the treatment of offenders, and it could be said that the influence of religion and religious practices in this context is as old as the history of prisons (Dammer, 2002). Since the reign of Emperor Constantine, imprisonment under the jurisdiction of the church was established as a form of substitution for corporal or capital punishment, and by the 18th century, the isolation of offenders from the outside world became an entirely accepted correctional practice (Dammer, 2002). Even then, it was believed that long-term isolation, combined with continuous and deep conversations with clergy – prison chaplains – would lead to the offenders' repentance and sincere regret for the sins they had committed (Dammer, 2002). This initial influence of religion on the philosophy and design of the first correctional institutions, penitentiaries, as precursors to today's prisons, points to the fact that the very idea of the existence of prisons as we know them today is, in fact, originally religious.

Even in the Balkan region, the influence of Orthodox Christianity in prisons was such that, for instance, the legal system of Montenegro recognized the so-called prison ministry, or the existence of priestly service in prisons, since 1899, when an act of the Metropolitanate was passed, until the Austro-Hungarian occupation during World War I, in 1915 (Radoman, 2019, pp. 106–107). The spiritual service of prison chaplains was reflected in ensuring the conditions for fulfilling basic Christian duties within prisons. Prison priests were obligated to perform confessions and administer the Eucharist, in agreement with the prison governor. In the case of individuals sentenced to death, this meant that the priest had a strict obligation to call for repentance and communion, as "the Church of God shows compassion toward that person" (Radoman, 2019, p. 108). The essence of the prison ministry idea was based on the belief that "... the Orthodox Church does not abandon the faithful even when they fall into sin, but offers them spiritual help and comfort and calls for repentance for their misdeeds" (Pravilnik dužnosti sveštenika, 1901, as cited in Radoman, 2019, pp. 106–107).

In the literature, we find foreign studies that have explored the relationship between religion and criminal behavior, based on which it can be concluded that this relationship exists, that it is quite strong, inverse, and carries relevant implications for both theory and practice (Johnson & Schroeder, 2014). There is increasing evidence that religion, individual religious commitment, and affiliation with a religious community have the potential to prevent youth in high-risk urban environments from engaging in a wide range of delinquent behaviors, including both minor and more serious forms (Evans et al., 1996; Johnson et al., 2000; Regnerus, 2003; Wallace, 1998). Similarly, it has been shown that young people who continue to attend religious services and participate in religious activities are less likely to commit crimes or start a delinquent career during adolescence. This means that religious devotion stands out as an important protective factor in shielding young people (and adults) from delinquent behavior and deviant activities (Baier & Wright, 2001; Hirschi & Stark, 1969; Stark, Kent & Doyle, 1982).

The Importance of Studying Religion in Prisons – Explanatory and Contextual Framework

Sociologically, religion satisfies a range of human social needs, such as the need for social identity, the need for belonging, rootedness, and, in general, the need for meaning and a relationship with the transcendental (Opalić, 2008). Even sociological classics of functionalist provenance emphasized that religion has both a direct, socially integrative function and an indirect function, related to the psychological integrity of the individual. In this sense, it provides a framework for collective identity, integrating not only the individual but also entire social communities, satisfying the social need for maintaining order and stability, as well as ensuring a minimal degree of integration of different subsystems of the social system. This means that religious beliefs and symbols, shared by all members of society, facilitate the balanced functioning of the social system (Dirkem, 1982). Religion also meets other needs of humans as social beings, such as the need for social identity, belonging, rootedness, and, generally, the need for meaning and a relationship with the transcendental (Opalić, 2008). Religiosity increases life satisfaction, happiness, self-esteem, hope, as well as the ability to control primal impulses and the willingness of believers to overcome negative life experiences (Opalić & Ljubičić, 2007).

Meeting religious expectations can lead to desirable outcomes, such as lower levels of drug use and increased prosocial behavior under the

influence of religion, or a deeper sense of belonging (Kimball, 2020). In addition to its protective function, religion can play a significant role in promoting prosocial behavior, as it is one of the many factors that, from the perspective of criminological theories of social control, can be said to "bind" the individual to society and conventional or normative behavior. This can be illustrated by considering the four elements of Hirschi's social control theory – attachment, commitment, involvement, and belief (Hirschi & Stark, 1969). Research shows that religious commitment promotes or enhances beneficial outcomes, such as well-being (Musick, 1996; Willits & Crider, 1988), meaning and purpose (Sethi & Seligman, 1993), self-esteem (Bradley, 1995; Koenig et al., 1999), and educational achievement (Johnson et al., 2000; Regnerus, 2003). If we understand quality of life as an objective evaluation of the main aspects or the whole of life in society, and well-being as a subjective assessment of quality of life, or an abstraction relating to the quality of any of the many important aspects of life, a set of aspects, or their total number (Pavićević, Ilijić & Batrićević, 2024, p. 113), then by developing self-esteem, autonomy, responsibility, and trust, incarcerated individuals adopt prosocial values and embrace a positive identity, which contributes to the abandonment of criminal behavior and, consequently, the reduction of recidivism (Pavićević, Ilijić & Batrićević, p. 70).

James A. Beckford is one of the contemporary authors who emphasized the importance of studying religion in prisons, due to its connection with issues of terrorism and extremism among incarcerated individuals of the Muslim faith (Beckford, 2010). Highlighting the presence and spread of various religions in prisons and other state institutions in the United Kingdom, Beckford sought to demonstrate that the thesis of a post-secular paradigm in 21st-century Europe is not dominant. Around this time, specifically in 2005, he published, together with Sophie Gilliat, the first in-depth study on the relationship between the Anglican Church and other faiths in prison chaplaincies, investigating the increasingly controversial role of Anglican chaplains, which is reflected in the growing religious and pastoral care for incarcerated individuals who are not Christian. By comparing this situation in British prisons with that in the United States, the two authors showed how the fight for equal opportunities in a multifaith society politicizes the relationships between church, state, and religious minorities in England (Beckford & Gilliat, 2005; Milićević & Gojković, 2024).

Based on this, as well as many other empirical results from his studies on this topic, Beckford emphasized that for sociologists, the phenomenon of religion in prisons is important for three reasons – first, prisons are under

state control, yet incarcerated individuals perceive them as private spaces; second, minority religions are more prevalent among prisoners, which means that they are multifaith environments that must be managed appropriately; and finally, prisons are often places conducive to intense religious introspection and reflection (Beckford, 2010). Martínez-Ariño and Zwilling, in their review of the presence and role of religion in European prisons, noted that prisons are an interesting field of study for sociologists who want to explore how state policies are connected to the social and cultural diversity of people, and for sociologists who want to examine how large-scale social changes are reflected "in microcosm". By focusing on clearly defined social contexts, such as prisons, sociologists are able to conduct a more in-depth analysis of the regulations and negotiations around religion as they happen in practice, beyond what legal frameworks prescribe (Martínez-Ariño & Zwilling, 2020, pp. 11–12).

As expected, with the democratization of many European countries in recent decades, which has brought with it the recognition of the right to religious freedom, religious diversity has become an important feature of prison systems. This is evident, both in the religious profile of prison populations and in the religious services and chaplaincies offered. In this sense, in countries where reliable statistics are available, such as Austria, Finland, and the Netherlands, the diversification of prisoners' religious affiliations is evident and can be seen through the different models of chaplaincies offered to them (Martínez-Ariño & Zwilling, 2020, pp. 6–7). The extent to which religion has been revived in post-Soviet countries varies significantly from country to country, so examining their prison systems allows for more specific observations about how religion has repositioned itself during the transition to democracy in the post-communist era (Martínez-Ariño & Zwilling, 2020, pp. 11–12). For example, in some former socialist countries, such as Bulgaria and Romania, re-Christianization and the renewed importance of religion in prisons have been recorded, while in the Czech Republic, this is not the case, as religion remains relatively marginalized even in the post-socialist period (Horák, 2020; Staničić & Zrinščak, 2020, cited in Martínez-Ariño & Zwilling, 2020).

Overview of Empirical Research on Religion in Prisons

Religion Research in Prisons in the U.S.

One of the greater methodological challenges when conducting research in prisons is finding a balance between protecting the privacy of inmates and allowing their participation in the study. According to Abbott and colleagues, this balance is more likely to be achieved if the research is carefully planned, taking into account the specific challenges one may encounter in the prison context and the ways these challenges can be addressed through the application of appropriate methods (Abbott et al., 2018). They note the growing need for research on the experiences of people in prisons through qualitative methods, but emphasize that conducting such research is complicated by prison restrictions, inherent controls, and power imbalances in the prison context, which increase the risks of coercion and the emergence of certain barriers to participation, while the closed and inflexible nature of prisons and information security procedures also affects confidentiality and privacy, thus limiting access to participants (Abbott et al., 2018). Indeed, the decision to participate in research may be influenced by subtle incentives, such as access to services or resources, or by the promotion of positive relationships with prison staff. The visit of a researcher may also be perceived as a form of social support for the inmates and a break from monotony, which undermines the principle of voluntary consent as a basis for participant selection (Abbott et al., 2018).

In existing studies on religion in prisons, the role of religious expression in such a specific context has been examined, particularly in terms of its impact on the adaptation of inmates to prison life; the effect of religious beliefs on their mental health and behavior in prison (whether religion motivates positive or negative behaviors); whether religion promotes favorable outcomes in their resocialization; and whether the state should increase religious programs in prisons, given their more or less favorable effects.

Donald Clemmer, Erving Goffman, Gresham Sykes, and other authors whose research is considered pioneering in sociological studies of prison life, applied qualitative methods and a symbolic-interactionist theoretical approach to study various deprivations faced by inmates in the prison environment, with a particular focus on how the prison experience shapes their (altered) sense of self, adaptation, relationships with fellow inmates and staff, and so on (Drake, Darke & Earle, 2015). Clemmer coined the term "prisonization", which refers to the influence of the prison experience on inmates, to the point where it results in the adoption of "prison customs, culture, and the general culture of the penitentiary" (Clemmer, 1958, p. 299).

The importance of how deeply an inmate integrates into the primary group within the prison community was particularly emphasized, as belonging to a primary group requires adherence to the "prison code", or a system of norms that demands loyalty to the prison group and opposition to the staff (Clemmer, 1958; Drake et al., 2015). These studies and findings about the assimilating effects of the prison environment on inmates paved the way for the development of the Sociology of Prison Life in the mid-20th century. This discipline focuses on the systematic study of prison societies, prison staff culture, and/or prisons as organizations. Contemporary studies of prison life examine this world in various ways, through concepts such as space, place, architecture, gender, ethnicity, law, political economy, and national and global governance (Drake, Darke & Earle, 2015).

Since then, the rapid growth in the number of prisoners in the United States has driven increased interest in a deeper understanding of the social impact of incarceration. A regularity has been established, showing that prisoners are more likely to report mental health issues compared to the general population, with some studies estimating that as many as half of all prisoners experience some form of mental health problem (Drakeford, 2018). It has been found that one aspect of the prison environment that affects mental health is inmates' participation in religious activities, with a generally positive correlation between individual religious practice and mental distress among inmates, conditioned by the intensity of religious practice and the type of religious activities (Drakeford, 2018).

In terms of the religious context in prisons, findings show that prisoners in very religious and very non-religious prisons reported fewer mental health problems compared to prisoners in institutions with a balanced religious context. This suggests that extreme religious or non-religious environments may reduce the sense of mental distress, while balanced environments may create additional stress or a sense of insecurity (Drakeford, 2018). In the case of inmates suffering from severe mental disorders, such as schizophrenia, research should be conducted to determine the social origins of schizophrenia – for instance, disturbed communication within a dysfunctional family system, where the ill person was a victim of so-called "double messages" in communication with their parents (double-bind) (Gojković, 2024). In systemic family therapy, there is a whole school that developed around this theoretical concept, which has been used as a hypothetical framework in many later studies on the etiopathogenesis of schizophrenia – although the prevailing impression is that these studies did not confirm the double-bind hypothesis, not only due to methodological flaws but also because they failed to uncover conceptual or operational schemes that would indicate the existence of double-bind communication

(Gojković, 2024). These studies were mainly conducted using qualitative methods – through interviews and content analysis of letters written by mothers to hospitalized schizophrenic children, but some authors also applied quantitative techniques, such as completing questionnaires or even resolving the inmate's dilemma (Beavers et al., 1965; Berger, 1965; Ringuette & Kennedy, 1966; Potash, 1965, as cited in Gojković, 2024, pp. 120–122).

At the same time, such findings suggest that religious expression in prisons may reduce the need for intervention by psychologists and psychiatrists or for eventual treatment of inmates with psychiatric disorders in asylum-type psychiatric institutions after leaving prison. This assumption is based on the ideas of anti-psychiatric movements that emerged in some European countries in the mid-20th century, which suggested the deconstruction and reform of traditional psychiatry and its practices in order to implement institutional and therapeutic changes more suited to individuals with mental disorders (Gojković, 2023, p. 62). The slogan "freedom as therapy" in the Italian version of anti-psychiatric thought stemmed from demands for deinstitutionalization, which is the process of gradually closing social protection institutions and relocating their users to the community, with the provision of adequate support services to meet their specific needs and prevent further institutionalization (Gojković, 2023, p. 64).

However, a review of contemporary literature that has presented empirical data on the impact of spirituality on the mental health and behavior of detained individuals shows that religion and spirituality are associated with more favorable outcomes for people with mental disorders; that practicing religion and spirituality is linked to a lower frequency and severity of depressive episodes, while the strongest reported effect of religion and spirituality in prisons is the reduction of incidents and disciplinary sanctions (see: Eytan, 2011). Clear and Sumter conducted one of the most well-known studies of this kind, applying a religiosity scale and a prison adjustment scale to examine the impact of religion on how inmates cope with the challenges they face when entering a new environment. They discovered a connection between inmates' religiosity and their psychological adaptation to the prison environment, with inmates who reported higher levels of religiosity also reporting a higher level of adjustment (Clear & Sumter, 2002). At the same time, they concluded that the relationship between religiosity and adaptation was the result of interactions between depression, self-esteem, self-control, adaptation, and religiosity (Clear & Sumter, 2002). A particularly interesting finding was that religious inmates were less likely to report feeling as though they were in captivity compared to non-religious inmates (Clear & Sumter, 2002).

Harold G. Koenig, in a study aimed at examining the religious characteristics and backgrounds of prisoners over the age of 50 incarcerated in a U.S. federal prison, found that religious background, beliefs, activities, experiences, and intrinsic religiosity are important factors for the adjustment and behavior of older prisoners (Koenig, 1995). On the other hand, there was weak support for the connection between religiosity and positive forensic factors, such as first-time incarceration and fewer disciplinary actions (Koenig, 1995), which contrasts with later findings by Clear and Sumter. It should also be noted that old age is associated with an increased risk of somatic diseases and comorbidity with mental disorders, among which dementia and depression are predominant (Gojković, 2023a, p. 707). However, old age can bring about cognitive changes, memory changes, interpersonal changes, mood and behavioral changes, or slowed mental processes, making it difficult to determine whether they are solely due to age, psychosomatic illness (such as depression, hyperthyroidism, etc.), or are socially conditioned (Gojković, 2023a, p. 713).

Byron R. Johnson is probably the only contemporary author who consistently addresses this topic, and his studies mostly affirm the positive role of religious programs for the rehabilitation of convicted individuals. Based on this, he urges U.S. federal and state authorities to increase the presence and impact of religious programs in prisons. By researching the presence of religious programs in four correctional facilities in New York, he found that participants who attended certain programs (with an attendance of 5 to 10 sessions) showed differences in prison infractions and recidivism after one year, with these effects seeming to decrease after two or three years upon release (Johnson et al., 1997; Johnson, 2004).

Johnson and colleagues pointed out that "religious programs for prisoners are not only among the oldest but also among the most common forms of rehabilitation programs in correctional facilities today" (Johnson et al., 1997, p. 146). However, despite their widespread presence, Gerace and Day rightly observe a lack of systematic research on the connection between religious practice in prison and key rehabilitation or correctional outcomes (Gerace & Day, 2010). More theoretical and empirical attention has been given to the use of such programs during incarceration, with research typically focusing on the effects of religious programs in prison on outcomes such as institutional behavior and recidivism (Gerace & Day, 2020, p. 318).

On the other hand, for example, analyzing existing studies on the outcomes (prison infractions, recidivism, adjustment) of prisoners' religious engagement, O' Connor and Perryclear concluded that "few studies that

have directly examined the impact of religion on the rehabilitation of adult offenders follow a pattern that exists in the broader literature – some evidence of a statistically significant relationship between religious engagement and rehabilitation is accompanied by methodological weaknesses that leave some questions unresolved and findings uncertain" (O' Connor & Perryclear, 2002, p. 13). While it is true that most of these studies point to a positive effect of religion and religious programs on recidivism, it is important to examine their long-term effects and to identify ways in which these programs can be optimized to provide sustainable support to convicted individuals during and after their return to the community (Gerace & Day, 2010).

As positive correlations between religious engagement and participation in religious programs in prison with favorable outcomes, both during the prison sentence and after release, are often discussed, it is important to address factors such as integration into the religious community (not just attendance), as well as how private religious beliefs interact with other social aspects (support, challenges in beliefs) and their impact on the attitudes of convicted individuals and changes in their behavior (Gerace & Day, 2010).

Empirically, it has been confirmed that religion can create social networks and group ties that provide emotional support to convicted individuals and strengthen their psychological resilience (Drakeford, 2018; Gojković, 2024a). Kerley et al., analyzing survey data from a large correctional facility in the southeastern U.S., found that religiosity directly reduced the chances of frequent arguments among prisoners and indirectly lowered the likelihood of fights breaking out (Kerley, Matthews & Blanchard, 2005). Social support, in the form of support from fellow prisoners, correctional officers, but also from friends, family, and partners, is an important link that could, during incarceration, increase the capacity to cope with the stressful situation of entering and staying in prison, but also after release, by maintaining the mental health of convicted individuals (Gojković, 2024a).

Jang, Johnson, and Anderson tested the hypothesis that prisoners' religiosity is positively related to virtues, which, in turn, are inversely related to negative emotions. They found that both public (attending religious services) and private religious behavior (praying and reading holy books) were positively associated with virtues such as forgiveness, self-control, and gratitude, while forgiveness and self-control were inversely related to pain, depression, and anxiety (Jang, Johnson & Anderson, 2023). To analyze the data from a survey of 139 men from a Colombian prison, they applied structural equation modeling (Jang, Johnson & Anderson, 2023). One of the possible explanations for the findings offered by the authors is to consider the effect of selection, since public religiosity may, to

some extent, reflect extrinsic forms of religiosity, i.e., participation in religious activities that serve other goals beyond religious beliefs, as opposed to private religiosity, which is more likely to indicate intrinsic religiosity, where faith itself is the goal (Jang, Johnson & Anderson, 2023). Examining whether religiosity in prison enhances feelings of meaning and purpose in the lives of South African prisoners (the so-called "existential effect" of religion) and whether it helps develop certain virtues ("virtue effect" of religion), Jang and Johnson found that religious prisoners reported higher levels of meaning and purpose in life, as well as gratitude and self-control, compared to those who were less religious or not religious at all (Jang & Johnson, 2020).

According to a 2012 report by the Pew Research Center's Forum, which presented the findings of a survey of prison chaplains and religious services coordinators working in state prisons conducted in all 50 U.S. states a year earlier, state prisons are dynamic places when it comes to religious activity – not only do frequent conversions of prisoners to other faiths occur (in 77% of cases, this happens to a large extent or sometimes, mostly to Islam or Protestant Christianity), but most chaplains believe that religious counseling and other programs based on religion are an important aspect of prisoner rehabilitation (Boddie & Funk, 2012). Around 73% of chaplains believe that access to religious programs in prison is "absolutely critical" for successful prisoner rehabilitation, while 78% believe that the support of religious groups after release from prison is "absolutely critical" for the successful reintegration of former prisoners (Boddie & Funk, 2012). 62% of chaplains reported that religious programs in the prisons where they work, which are focused on rehabilitation and the reintegration of convicted individuals (faith-based training and mentoring), are available and successful, both in terms of usage and quality, which, according to 0% of respondents, has improved in recent years (Boddie & Funk, 2012). O' Connor and Duncan investigated why the correctional system should take humanistic, spiritual, and religious identities of incarcerated individuals more seriously and do everything it can to encourage and support these identities. Meta-analytic findings from studies conducted by the American Psychological Association, along with findings from ethnographic and some recidivism studies, suggest that humanistic, spiritual, and religious pathways to understanding meaning and purpose in life can be an important part of evidence-based principles of responsivity, as well as the process of desistance from reoffending (O' Connor & Duncan, 2011). They described the so-called Sociology of Humanistic, Spiritual, and Religious Engagement with 349 women and 3,009 men in prison in Oregon, where 25% of women and 71% of men voluntarily attended at

least one such event during their first year of incarceration – in addition to them, a broad prosocial network involving chaplains, other staff, and volunteers developed around these events. The events related to humanistic, spiritual, and religious engagement were mostly infused with various religious and spiritual traditions, such as Native American, Protestant, Islamic, Viking, Jewish, Mormon, Buddhist, and Catholic, while it is noticeable that more and more events have a secular or humanistic context, such as yoga, education, life skills development, transcendental meditation groups, and the like (O' Connor & Duncan, 2011).

Presentation of Key Findings from the Researches on the Religious Life in Prisons in Serbia

In the case of the Balkan countries, we can see how historically dominant churches developed various strategies, such as involvement in the legal and administrative management of prisoner situations, in order to adapt to new circumstances, as is the case in Romania (Kalkandjieva, 2020, as cited in Martínez-Ariño & Zwilling, 2020). Romania and Italy are examples of how, in several historically Christian prison systems, chaplains or priests are part of the institution's board, where they are authorized to assess the moral quality of prisoners and influence decisions regarding punishments and releases (Martínez-Ariño & Zwilling, 2020, p. 3). A recent study analyzing religious presence in prisons in Croatia showed that religious presence in prisons is a completely new phenomenon compared to the socialist period; that legal provisions regarding freedom of religion are respected and that all religious communities have equal access and are treated equally. The religious presence in prisons is generally ensured in a traditional way – through religious services and providing spiritual assistance in the form of prayer, confession, or conversations with religious officials (Staničić & Zrinščak, 2020, as cited in Martínez-Ariño & Zwilling, 2020).

In the Socialist Federal Republic of Yugoslavia, the secularization paradigm predominated – since 1945, all Yugoslav republics experienced a historical process of the declining social importance of religion and the influence of religious ideas in people's everyday lives, a process in which religious institutions, practices, and religious consciousness lost their social significance (Blagojević, 2005). However, by the late 1980s and early 1990s, all socialist societies, including Yugoslavia, began to follow their post-socialist developmental paths, accompanied by social processes of re-traditionalization and de-secularization. This meant that religion's role in various areas of religious and social life was revitalized and

strengthened, not only through the "return of the sacred" and various forms of so-called postmodern religiosity but also in its traditional, institutionalized, and even conservative forms (Blagojević, 2005).

De-secularization in Serbian society began even during socialist Yugoslavia, with the liberalization of the system in the late 1980s, but this process intensified during the early stages of political pluralism and the consolidation of democratic political institutions after the October 5th changes in 2000 (Vukomanović, 2016). This period also saw numerous changes in the relationship between the state and religious communities in Serbia, with the most important among them being the revitalization of religious life, meaning that religion was no longer just a private matter but had a place in the public sphere; the adoption of a new law on religious freedoms in 2006, which changed the legal position and status of religious communities; the restoration of religious institutions and churches; religion gaining its place in public services and private media; the return of religious education in public schools; the involvement of religious communities in social work and philanthropy; and the new normative role of religious communities, including their ethical and political-symbolic functions in society (Vukomanović, 2016, p. 270). During this period, the Serbian Orthodox Church began to provide a new ideological framework for state institutions, such as the army or schools, to fill the ideological vacuum that emerged after the collapse of communism. Thus, slowly but surely, and through various forms of alliances with the state, Orthodox religion experienced a revival in the public sphere, through the media, education, the defense system, the correctional system, and so on (Vukomanović, 2016).

Lidija Radulović is the only author in Serbia who, from an ethnological and anthropological perspective, studied religion in prisons. She found that prisoners' attitudes toward religion in Serbia primarily depend on personal preferences and motivations, with an important factor being the provision of structural conditions and an environment in which prisoners can establish or change their relationship to faith, or, if they were already religious, receive institutional support (Radulović, 2022, p. 121). She noted that a process of accommodating religious content into state institutions in Serbia, including prisons, started about fifteen years ago. The Serbian Orthodox Church, as the most representative religious organization, is the only one with prison chapels and churches (Radulović, 2022). She also emphasized that the process of institutionalizing religion in Serbian prisons is complex and has been gradual, but the entry of clergy and religious officials into prisons has led to greater visibility of religion, especially where liturgical conditions allow prisoners to participate in religious rituals.

However, this has not resulted in increased religiosity among prisoners, as is the case in the general population (Radulović, 2022, p. 123). In places where the church's institutional presence is not organized, and given that, in the last decade, support from religious organizations and churches in most Serbian prisons is often insufficient, untimely, and irregular, prisoners are forced to construct their own spirituality and engage in religious practices that are adapted to the religious conditions available (Radulović, 2022, p. 125–126).
Based on an analysis of prisoners' narratives, Radulović found that, in the process of building religious individualism, religious laypersons in prisons who take on the role of surrogate priests are generally assigned the role of ritual mediators who are meant to replace the lack of a formal mediator between God and humans (Radulović, 2022, p. 126). On the other hand, the position of prisoners, their place in the social structure as outcasts from society, and the criminal structure that poses a barrier to rehabilitation – these are just some of the reasons why inmates turn to religious individualism. This manifests in them concealing their devotion to faith, praying before sleep in secret, relying solely on personal communication with God, and making efforts not to discuss it with others (Radulović, 2022, p. 126).
In most Serbian prisons, special rooms are equipped as chapels, and a few prisons have even built smaller churches. Interestingly, in the Belgrade District Prison, New Testament Bible workshops are held, where participants of various ages, educational backgrounds, and varying relationships with faith work with religious officials. The aim of these workshops is to awaken responsibility, primarily for one's own life and decisions – more specifically, to encourage those in crisis situations to reflect on what they have done and, based on that, reconsider their lives (Radulović, 2022).
This year, as part of a research project on the quality of prison life – *Assessment and Possibilities for Improving the Quality of Life for Incarcerated Individuals in the Republic of Serbia: Criminological-Penological, Psychological, Sociological, Legal, and Security Aspects* (PrisonLIFE project), a study was conducted on the religious aspects of quality of life in Serbian prisons. The goal was to identify differences in the prison experience between participants who have the opportunity to practice their religious customs, if they wish, and in accordance with the prison's house rules, and those who do not have that opportunity or choose not to practice (Milićević & Gojković, 2024, p. 71)[3]. Preliminary results showed a

[3] The research was conducted in five correctional facilities in Serbia – the Women's Prison in Požarevac and four men's prisons in Sremska Mitrovica, Požarevac

significant correlation between the ability to practice religious customs and the quality of life in prison, as incarcerated individuals who had this opportunity had more positive perceptions of all aspects of prison life, including their overall rating (Milićević & Gojković, 2024, p. 71).

According to the data collected, 68% of the respondents stated that they are able to practice religious customs in prison, while 20% indicated they do not have this opportunity (Milićević & Gojković, 2024). The quality of life was assessed using the standardized questionnaire Measuring Quality of Prison Life (*MQPL*), which evaluates the quality of life in relation to dimensions such as harmony, professionalism, safety, living conditions in prison, contact with family, as well as well-being, welfare, and personal development (Liebling et al., 2012, as cited in Milićević & Gojković, 2024). Respondents who were able to practice religious customs rated the quality of life significantly higher (average score – 4.69) compared to those who could not (average score – 3.56), leading the authors of the study to conclude that the ability to practice religion could improve the overall quality of life for incarcerated individuals (Milićević & Gojković, 2024).

Respondents who were able to practice religious customs also rated the level of harmony higher compared to those who either did not have the opportunity or did not want to practice religious customs, as well as those who were unsure or unwilling to answer the question. This suggests that they experienced the prison environment as more humane and caring, and they also gave more favorable evaluations regarding the care and support provided to vulnerable groups of incarcerated individuals (Milićević & Gojković, 2024).

Furthermore, the research findings indicate that the transparency and accountability of the prison system appear better when the religious rights of incarcerated individuals are respected during their sentences, and that allowing religious practices may contribute to an increased sense of fairness and legality within the prison (Milićević & Gojković, 2024, p. 63). Inmates who were allowed to practice religious customs and wished to do so, rated their personal security and adaptation to prison daily life higher – meaning they felt safer in the prison where they were serving their sentence (Milićević & Gojković, 2024, p. 64). Respondents who had the ability to practice religious customs when they wished also had a more positive perception of their living conditions in prison (such as

(Zabela), Niš, and Belgrade. The sample of the research was convenient and consisted of 632 participants (86% men and 14% women). 90% of the participants identified as Christians, 4% as Muslims, and 1% as members of other religious affiliations (Milićević & Gojković, 2024).

accommodation, hygiene, and general comfort) and reported better maintenance of family connections, compared to those who did not practice religious customs (Milićević & Gojković, 2024, p. 65).
Finally, practicing religious customs in prison was associated with a higher average rating of subjective well-being, welfare, and opportunities for personal development. These inmates also gave more favorable assessments regarding their preparation for life after release, greater self-determination, and a reduction in feelings of pain, tension, and emotional disturbance (Milićević & Gojković, 2024, p. 66).

Conclusion

Research on religion and religious practices in prisons is quite rare, and the goal of this paper was to present some of the studies that highlight the positive impact that religion and religious programs have on incarcerated individuals, in order to stimulate the interest of the broader academic community in this topic. In this regard, the studies summarized in this paper primarily affirm the positive impact of religion on incarcerated individuals who are serving prison sentences, particularly on some aspects of prison life. These include mental health, adaptation to life in prison, the influence of religion, spiritual leaders, and participation in religious programs in prisons on obtaining social support and adopting prosocial values, as well as the impact of religion on preparing prisoners for life after release, i.e., rehabilitation and reintegration, which is reflected in reduced recidivism rates, and so on.
However, the other side of this research phenomenon remains unexplored or insufficiently explored, which would be interesting to investigate and present in a future study. Some of the questions raised concern whether practicing religion in prisons can also have some negative effects on incarcerated individuals; whether practicing religion in prisons is an end in itself, or whether the purpose of practicing it is the moral improvement of prisoners or just an illusion, as religion may be practiced for other, external purposes (such as obtaining certain benefits or rewards from prison staff); whether practicing religion, combined with the conditions of life in prison, can lead to negative, antisocial behaviors among prisoners; whether the overall prison atmosphere can serve as fertile ground for the emergence of distorted, deviant forms of religious behavior, such as religious extremism, fundamentalism, and affiliation with different denominations or sects; whether practicing religion in prisons can lead to mental health issues and trigger the onset of psychological disorders in

prisoners; and what the relationship between religion and affiliation with formal and informal prison systems is.

Peretti and McIntyre are among the few authors who have noted a negative relationship between religion and serving a prison sentence. In the mid-1980s, they conducted a study at the Cook County Jail in Chicago and found that participants who had been incarcerated for a year or more reported feeling as though God had abandoned them and were not willing to adhere to legally prescribed values and attitudes (Peretti & McIntyre, 1984; Gojković, 2024a). The authors observed a decline in participants' attitudes toward interaction and cooperation with others, as well as toward creating an atmosphere of trust and honesty. In addition, the respondents complained about the lack of religious coping mechanisms to deal with the unknown and with conflicts, leading the researchers to conclude that incarceration could have a negative effect on fulfilling religious functions and might even lead to personality dysfunction, as the values that participants had prior to entering prison were no longer relevant, and their motivation for certain goals was lost (Peretti & McIntyre, 1984; Gojković, 2024a).

We might agree with Jang and Johnson, who argue that while most studies on this topic show that religion improves the emotional and/or social well-being of incarcerated individuals, few studies explain how this occurs, neglecting the question of how religion can improve well-being and whether it helps men and women equally (Jang & Johnson, 2020; Gojković, 2024a). Also, as mentioned earlier in this paper, alongside existing research on the mental connection between religion and mental health in incarcerated individuals, conducting studies that consider religion as part of the family communication context for the development of schizophrenia in prisoners could lead to interesting and scientifically relevant findings.

One study showed that prisons with a majority of religious or non-religious inmates, or those with a moderate religious presence, could have different effects on the mental health of prisoners (see: Drakeford, 2018). Prisons where all inmates are religious may offer a strong religious social capital but could cause conflict or maladjustment in inmates who do not identify with those religious norms. On the other hand, prisons where all inmates are non-religious may have a lower level of religious engagement and less social support from religious communities (Drakeford, 2018). Since involvement in religious programs facilitates the building of social connections and prosocial learning through interaction with volunteer communities that serve as models for prosocial bonding and behavior, Gerace and Day argue that future research could examine how social processes and changes, group influence, and assimilation interact in the

prison religious environment (Gerace & Day, 2010). In a study by the Pew Research Center's Forum, about 40% of chaplains surveyed indicated that religious extremism in prisons is either very common or somewhat common, especially among Muslim prisoners, and rarely poses a security threat to the prisons in which they work (Boddie & Funk, 2012). In this sense, the presence of religious extremism in prisons could be an interesting research question.

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Original Scientific Paper

Competences for Working in the Prison System[1]

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Competences (values, knowledge and skills) of prison staff are of great importance for effective rehabilitation work with prisoners. The aim of this paper is to gain insight into the competences of the staff in the Croatian prison system and to determine the differences in the assessment of the necessary competences and self-assessment of their own competences between treatment and security staff. In order to achieve the stated aims, the following research questions were formulated: 1) which competencies do prison staff consider important for work in the prison system, 2) how do prison staff evaluate their own competencies for work in the prison system, 3) do prison staff participate in education related to work in the prison system, 4) do prison staff express the need to develop new or improve existing competencies for work in the prison system. In relation to each posed research question, the difference between treatment employees and security employees was examined. A total of 106 treatment and security employees of four penal institutions in Croatia participated in the research. For the purposes of research, and based on relevant documents at the world, European and national level, a two-part questionnaire was created. The first part refers to the competencies (assessment of those needed and self-assessment of their own), while the second part refers to general information about the participants.

[1] The views expressed in this paper are not necessarily the official views of the Ministry of Justice, Administration and Digital Transformation of the Republic of Croatia.

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The results indicate a favorable situation regarding the assessment of the necessary competences and self-assessment of their own competencies for work in the prison system among the employees of the penal institutions who participated in the research. The paper presents the results according to the mentioned research questions in more detail, and it is concluded that the competencies of the prison staff are a valuable research topic that deserves further scientific interest.

Key words: *Competences, Treatment staff, Security staff, Prison system*

Introduction

For effective rehabilitation work with prisoners, the competences of the experts who carry out this work are of particular importance (Auty and Liebling, 2020). Moreover, the competencies of prison staff are an important factor in determining the quality of life of prisoners (Crewe, 2011). Adequate values, knowledge and skills (as basic elements of competence) of prison staff who carry out various tasks in the prison system are stated in relevant international standards (*Nelson Mandela Rules, European Prison Rules*) as one of the key elements in achieving the purpose of serving a prison sentence. At the European level, the Guidelines Regarding Recruitment, Selection, Education, Training and Professional Development of Prison and Probation Staff of the Council of Europe (CoE, 2019) are extremely useful, which specify very specific areas of competence of prison system employees[5]. Competences of prison system employees can serve as an indirect indicator of the implementation of the rehabilitation orientation of the specific prison system. In the existing literature, little space is devoted to this topic, which can partly be explained by the different structures of prison systems in terms of existing services (i.e. experts) in penal institutions. Likewise, it is possible that these topics are processed more on a professional and practical level, so as such they do not receive adequate attention in the format of scientific papers[6]. There are works that deal with the characteristics, behavior and views of correctional officers, as well as the interaction between staff and

[5] As an example of very detailed competencies, the comprehensive competency matrix developed by the Iowa Department of Corrections can be highlighted (BJA et al., 2020).

[6] In the context of the importance of education and lifelong schooling of correctional officers, the EU project PO21: Prison Officers for the 21st Century (https://www.prison-officers21.org/) can be highlighted.

prisoners, i.e. their treatment and the impact of all of the above on the behavior and rehabilitation of prisoners (Antonio and Price, 2021; Beijersbergen et al., 2015; Crewe and al., 2011; Logan et al., 2020, Meško et al., 2004; Young et al., 2009), but there is a lack of works that deal with the views (and self-assessment) of prison officers about important competencies for working in the prison system, as well as the differences between treatment and security staff, as services whose tasks (in more traditional systems) seem opposed. The purpose of this paper is to stimulate interest in this topic.

Basic information about the vocational education, training and development of the employees of the prison system in the Republic of Croatia

Execution of prison sentences is carried out by civil servants in accordance with the duties and tasks of the workplace to which they are assigned (Article 33 of the Law on Enforcement of Prison Sentence, 2021). Given that we are dealing with treatment and security workers, we will briefly present the basic educational requirements for working in the prison system, as well as the professional development system for these workers. Security work in the Croatian prison system is performed by officers of the judicial police who "secure the penitentiary or prison, persons and property, supervise prisoners and perform other tasks prescribed by the Law and implementing regulations" (Article 41 of the Law on Enforcement of Prison Sentence, 2021, 2023). In order for someone to be employed as a judicial police officer in the Security Department of a penal institution, it is necessary (upon admission to the civil service and assignment to security duties) to complete a basic course[7] organized by the Training Center[8], which "consists of theoretical classes and exercises, mastering the skills of shooting with firearms and martial arts, as well as the practical part" (Article 17 of the Ordinance on Professional Training in the Prison System). Most jobs in the Security Department require a high school diploma. Treatment jobs (which are divided into general and specialist) are

[7] From the school year 2022/23, based on an agreement between the Ministry of the Interior and the Ministry of Justice and Administration, one class department (25 students) of the judicial police is trained at the Police Academy through the 3rd and 4th grade of secondary school education https://policijska-akademija.gov.hr/vijesti/potpisan-sporazum-o-suradnji-izmedju-mup-a-i-min istarstva-pravosudja-i-uprave-u-podrucju-obrazovanja/4153.

[8] More details in the Ordinance on Vocational Training in the Prison System.

performed by persons with a university degree[9] who, after employment in the prison system, attend a five-day course for newly arrived officers organized by the Training Center. Permanent vocational education is mandatory for civil servants in penal institutions (Art. 38 of the Law on Enforcement of Prison Sentence, 2021, 2023), and is carried out in the organization (or co-organization) of the Training Center[10], other educational institutions, as well as within the project activities of other state bodies and organizations of civil society. In addition to formal forms of education, civil servants also improve their skills by participating in various seminars, conferences, workshops and other forms of training (Government of the Republic of Croatia, 2024).

Aim, purpose and research questions

The aim of the research is to gain insight into the competencies in the prison system and to determine the differences in the assessment of the necessary and self-assessment of own competencies between treatment and security staff. The purpose of the research is to obtain a scientifically based basis for evaluating existing competencies and planning to improve the competencies of treatment and security personnel in the prison system in Croatia, as well as stimulating interest in this topic in the scientific and professional community. In order to achieve the objectives of the research, the following research questions were formulated:

1. What competencies do the prison staff consider important for working in the prison system?

Are there differences in the assessment of necessary competencies between treatment and security staff?

How do prison staff evaluate their own competencies for working in the prison system?

Are there differences in the assessment of own competences between treatment and security staff?

Does the prison staff participate in training related to work in the prison system?

Are there differences in the attendance of trainings between treatment and security staff?

[9] Professional treatment tasks are performed by social pedagogues, psychologists and social workers (Article 27 of the Law on Enforcement of Prison Sentence, 2021, 2023).

[10] More about the training programs organized by the Training Center in the Annual Report on the work of the Training Center for 2023 (2024).

Does the prison staff express the need to develop new or improve existing competencies for work in the prison system?
Are there differences in the expressed need for the development of new or improvement of existing competencies between treatment and security staff?

Methods

Participant sample

A total of 106 treatment and security staff from two penitentiaries (Lepoglava and Požega) and two prisons (Zagreb and Zadar) participated in the research. General socio-demographic data are presented in Table 1, which shows that the research participants are on average 45 years old (treatment workers are older than security workers), more often male (security workers are more often male), with a high school level of education (treatment workers are more often of higher education level), with an average length of service in the prison system of 16 years.

Table 1. *Participant sample*

Variable	**Category**	**Total**	**Treatment**	**Security**	
Age	Min=20, Max=61, M= 45,15, SD=8,30 $M_{treatment}$=47,82, SD=7,83; $M_{security}$=43,49, SD=8,1; t=2,69, p<,01				
Gender	M	60 (59,4)	10 (25,6)	50 (80,6)	χ^2=30,035 p<,01
	F	41 (40,6)	29 (74,4)	12 (19,4)	
Level of achieved education	High school	54 (51,4)	7 (17,1)	47 (73,4)	χ^2=34,253 p<,01
	Higher/undergraduate studies	5 (4,8)	2 (4,9)	3 (4,7)	
	Faculty/graduate studies	44 (41,9)	30 (73,2)	14 (21,9)	
	Postgraduate studies	2 (1,9)	2 (4,9)	0	

Length of service in the prison system	Min=0, Max=38, M=16,8, SD=9,94 $M_{treatment}$ =15,56, SD=10,81; $M_{security}$ =17,48, SD=9,43; t=-,920, p>,05				
Type of penitentiary institution	Penitentiary	51 (48,1)	24 (58,5)	27 (41,5)	χ^2=2,910 p>,05
	Prison	55 (51,9)	17 (41,5)	38 (58,5)	

Instrument

After consulting relevant documents at the world[11], European[12] and national[13] level, an instrument consisting of two parts was created to conduct the research:

1. Assessment and self-assessment of competencies for work in the prison system: 7 items assessing values, 30 items assessing knowledge and 36 items assessing skills, a total of 73 items.

For the purposes of this research, a definition is used according to which competences are "a combination of knowledge, skills and values, motivation and personal characteristics that enable an individual to be active and effective in a specific professional situation" (Glossary of basic terms and definitions in the field of quality assurance in higher education,

[11] UN Standard Minimum Rules for the Treatment of Prisoners (Nelson Mandela Rules), 2015; Report: Job Analysis: Adult Corrections Officer, Juvenile Corrections Officer and Probation Officer, State of California**,** Board of and State and Community Corrections, 2015.

[12] European Prison Rules, 2020; European Code of Ethics for Prison Staff (CM/Rec (2012)5); European Parliament Resolution of 5 October on prison systems and prison conditions (2015/2062(INI); Guidelines for the selection, recruitment, education, training and professional development of prison and probation officers (CoE, 2019).

[13] Law on Enforcement of Prison Sentence, 2021; Manual on the Treatment of Prisoners, 2021; Ordinance on Vocational training in the prison system, 2021; Code of Ethics for Civil Servants, 2011, 2012; Regulation on the procedure and criteria for evaluating civil servants, 2019; Law on Social Pedagogical Activities, 2019, 2022; Code of ethics of social pedagogues; Code of ethics of psychological activity; Code of ethics for social workers in the field of social work.

University of Zagreb, 2015). Three groups of items were created: values, knowledge and skills. Respondents evaluated the mentioned variables at two levels on a Likert-type scale. First, they assessed the importance of competencies for work in the prison system, and then personal mastery of said competencies.
2. General information about the participants:
Socio-demographic data: gender, age, level of education; employment data: length of service in the system, type of penal institution where they are employed, field of work (treatment, security);
Training attendance related to work in the prison system, the need for additional training.

Method of conducting research

The research was conducted within the framework of the project "Improving the quality of the judiciary through strengthening the capacity of the prison and probation system and the system for supporting victims and witnesses" of the Ministry of Justice and Administration as part of the activity of developing proposals for improving the competencies of prison system employees. The leader of the Working Group sent an invitation to the heads of the penal institutions involved in the research for the participation of employees in the research. The research was conducted in paper-pencil format in the period from December 2021 to January 2022. A total of 149 employees participated in the research, but this paper analyzes data only for treatment and security employees.

Data processing method

In addition to descriptive statistics (frequencies, mean values and standard deviations), the Mann Whitney U-Test and the Chi-Square Test are used to determine differences. The results are presented according to the research questions.

Results and discussion

Assessment of the importance of competencies for work in the prison system

When assessing the importance of competencies for work in the prison system, participants were offered groups of values, knowledge and skills that are considered necessary for work in the prison system. Participants were asked to indicate how important each of the values, knowledge and skills is to their work in the prison system, with response categories ranging from 1 (not at all necessary) to 5 (very necessary).

Values

Overall, the participants consider the offered values (Table 2) quite necessary for working in the prison system (M_{total}=4.40). According to the opinions of the participants, the most important value for working in the prison system is respect for professional and official secrecy, i.e. data protection. The importance of this value is also expressed in the Law on Enforcement of Prison Sentence (Official Gazette 14/21, 155/23), which stipulates the obligation to keep official and professional secrecy during, but also after, termination of employment. Namely, presenting information about prisoners and the security of penal institutions constitutes a breach of official duty (Ministry of Justice and Administration, 2021). In addition to the protection of personal data, participants consider respect for the dignity of colleagues and possession of high standards of personal honesty and integrity as "very necessary" for working in the prison system. The high valuation of these values is in accordance with the well-known requirements for ethics in the correctional system, which are emphasized in international standards for the treatment of prisoners, as well as in the professional and scientific community (Newell, 1991; Ward and Salmon, 2009). Of the offered values, according to the participants, belief in people's ability to change their behavior stands out as the least important value for working in the prison system. This is quite unusual information if we bear in mind the rehabilitative orientation of both the Croatian prison system and the European correctional systems (Williams et al., 2023), but it is more favorable than the opinion of the participants of the research conducted within the framework of the EU project PO21, who in approximately ¼ of

the cases consider how the rehabilitation of adult offenders simply does not work (Nascimento et al., no date[14]).

Table 2. *Values required for work in the prison system (percentages, means and standard deviations)*

Variable	N	%					M	SD
		1	2	3	4	5		
Belief in people's ability to change behavior	100	2,0	7,0	28,0	30,0	33,0	3,85	1,03
Respecting the specific characteristics of prisoners (eg race or ethnicity, gender, language, religion, political or other belief, education, state of health, etc.)	95		3,2	12,6	29,5	54,7	4,36	,82
Respecting the dignity of colleagues	97		2,1	6,2	19,6	72,2	4,62	,699
Respecting the dignity of prisoners	97	1,0	3,1	12,4	24,7	58,8	4,37	,89
Possessing high standards of personal honesty and integrity	96		1,0	11,5	21,9	65,6	4,52	,74
Respecting professional and official secrecy (data protection)	97		1,0	5,2	17,5	76,3	4,69	,62
Respecting ethical principles in working with prisoners	96	1,0	1,0	11,5	27,1	59,4	4,43	,82

N = number of participants; M = mean; SD = standard deviation; 1. not at all necessary, 2. slightly necessary, 3. moderately necessary, 4. quite necessary, 5. very necessary.

To determine the differences in the assessment of the importance of values for work in the prison system, a Mann Whitney U-test was performed, which confirmed that the treatment workers evaluate all analyzed values as more important than the security workers. We can understand these results as a kind of confirmation of the foundation of all treatment forms of work, as well as functioning in the work collective on specific ethical values,

[14] As part of a European project with the aim of designing a transnational curriculum for correctional officers, a survey was conducted in 2021 with 436 correctional officers from Germany, Portugal and Romania. The research questions focused on correctional orientation, the representation of specific topics in their initial training for work in the correctional system, the importance of the topics offered and the topics they consider necessary for better job performance.

which are possible reflections and differences in the level of education required to perform security work, i.e. treatment in the prison system.

Knowledge

According to the obtained values of means on the items of knowledge presented in table 3, the participants estimate the mentioned knowledge on average as quite necessary for their work in the prison system (M_{total}=4.26). The knowledge that the participants assessed as the most important is: knowledge of legal regulations important for the performance of workplace duties, knowledge of protocols for dealing with emergency situations such as escape, suicide[15], self-injury, etc., knowledge of the purpose of serving a prison sentence and knowledge of suicide prevention procedures and self-harm by prisoners[16]. The aforementioned items were assessed on a Likert-type scale as "very necessary[17]", which is not surprising given that regulated work procedures maintain the safety of penal institutions (Ministry of Justice and Administration, 2021), as well as prisoners. Regardless of the relatively weak interest of scientists in the educational needs of correctional officers (especially those with special police authorisations) (Ryan et al., 2022), the education of correctional officers on the topic of preventing suicides and self-injury of prisoners has nevertheless been given some attention (Hayes et al., 2008; Musselwhite et al., 2019a; Ward and Bailey, 2011). Furthermore, the behavior of prison staff on the basis of laws and by-laws is one of the fundamental principles of the work of civil servants (Ministry of Justice and Administration, 2021). Also, Liebling (2011) points out that the relationships between prison staff and prisoners form the core of prison life, where these relationships are essentially shaped by the professionalism of the employees and the legitimacy of their actions. On the other hand, knowledge of foreign

[15] Suicide prevention is an important topic in the prison context, which is also visible in the list of emphasized topics on the website of the European penitentiary training academies network (EPTA), https://www.nhc.nl/epta-ii-innovating-together-connecting-european-penitentiary-training-academies/.

[16] In 2007, the World Health Organization (WHO, 2007) published a publication on suicide prevention in prisons and penitentiaries (https://iris.who.int/bitstream /handle/10665/43678/9789241595506_eng.pdf), and Cramer et al. (2022) offered a core competency model for self-directed violence in the correctional system.

[17] Some of the topics listed are consistent with those cited as necessary in the ongoing training of correctional officers, according to German, Portuguese, and Romanian correctional officers (Nascimento et al., n.d.): prison policies and procedures, suicide prevention, security (fire prevention, handling in emergency situations), general security procedures, human rights standards, criminal law, etc.

languages, along with criminological-victimological knowledge about the phenomenology of criminality and knowledge about multi-culturalism, are assessed by the participants as the least necessary knowledge for working in the prison system, with knowledge of foreign languages being the only item that was assessed as "moderately necessary". The data on the low valuation of multi-culturalism can perhaps be seen from the fact of the low level of multi-culturalism in the Croatian prison system. Łapiński et al. (2014) in a sample of Polish prison officers found a competence deficit precisely in working with a multi-religious, multi-cultural and multi-ethnic prison population, while Nascimento et al. (n.d) state that German, Portuguese and Romanian correctional officers express the need for additional competences in the area of diversity (ethnic, cultural and religious).

Table 3. *Knowledge needed to work in the prison system (percentages, means and standard deviations)*

Variable	**N**	**%**					**M**	**SD**
		1	**2**	**3**	**4**	**5**		
Knowledge of the human rights of prisoners	97	2,1		8,2	26,8	62,9	4,48	,82
Understanding the concept of gender awareness (the ability to see society from the position of the gender roles of men and women and their needs) and sensitivity	97	1,0	6,2	16,5	37,1	39,2	4,07	,95
Knowledge of ethical principles in the treatment of prisoners	97	1,0	1,0	9,3	38,1	50,5	4,36	,78
Understanding the importance of respecting the dignity of prisoners	96	1,0	1,0	13,5	27,1	57,3	4,39	,84
Knowledge and understanding of the concept of torture and other cruel, inhuman or degrading treatment or punishment	97	1,0	3,1	11,3	26,8	57,7	4,37	,88
Knowing the purpose of serving the prison sentence	97	1,0	2,1	4,1	27,8	64,9	4,54	,76
Understanding the importance of the duties of my workplace in achieving the purpose of serving the prison sentence	96		3,1	7,3	31,3	58,3	4,45	,77
Knowledge of international standards (Mandela Rules and European Prison Rules) for serving prison sentences	97	1,0	8,2	19,6	37,1	34,0	3,95	,98

Knowledge of legal regulations important for performing the duties of my workplace	97		1,0	7,2	22,7	69,1	4,60	,67
Knowledge of by-laws and internal regulations that define the performance of my job	96		2,1	13,5	29,2	55,2	4,38	,798
Knowledge of the protocol (method of action) for dealing with emergency situations (escape, suicide, self-harm, death, fire, riot, hostage situation, refusal to take food)	96		1,0	7,3	24,0	67,7	4,58	,67
Knowledge of different forms of security in the prison system (static: walls, barriers, locks; procedural: procedures that maintain security and dynamic security: developing positive professional relationships) and their basic principles	96	2,1	1,0	11,5	31,3	54,2	4,34	,88
Knowledge of procedures for the prevention of suicide and self-harm by prisoners	96	1,0		6,3	33,3	59,4	4,50	,71
Knowledge of prisoner risk assessment concept	96	1,0		13,5	26,0	59,4	4,43	,80
Knowledge of the concept of treatment needs of prisoners	96	1,0	4,2	14,6	37,5	42,7	4,17	,90
Knowledge and understanding of security risks	95		1,1	9,5	28,4	61,1	4,49	,71
Knowledge and understanding of criminogenic risks	96	1,0	2,1	8,3	35,4	53,1	4,38	,81
Knowledge and understanding of protective factors	95		4,2	9,5	34,7	51,6	4,34	,82
Knowledge of general treatment interventions (work, education, leisure activities)	96	1,0	7,3	13,5	40,6	37,5	4,06	,95
Knowledge of specialized treatment interventions (special treatment programs, educational and developmental programs, psychoeducation, motivational interviewing, etc.)	96	4,2	3,1	16,7	39,6	36,5	4,01	1,02
Criminological knowledge about the causation (etiology) of committing criminal offences	96		4,2	27,1	38,5	30,2	3,95	,86
Criminological-victimological knowledge about the phenomenology of criminality	94		8,5	27,7	41,5	22,3	3,78	,89

Knowledge about addictions (alcohol, drugs, behavioral addictions)	96		1,0	13,5	43,8	41,7	4,26	,73
Knowledge about violent behavior (partner/spousal violence, child abuse, violence against the elderly, violence against other vulnerable groups)	96		1,0	19,8	37,5	41,7	4,20	,79
Knowledge about sexual violence (sexual victimization of children, sexual victimization of adults)	96			19,8	30,2	50,0	4,30	,78
Knowledge about stress, trauma and indirect (secondary) trauma	96		1,0	16,7	41,7	40,6	4,22	,76
Knowledge about suicide and self-harm	94	1,1		11,7	44,7	42,6	4,28	,75
Knowledge of multi-culturalism (knowledge of value systems of different groups or cultures)	96	2,1	4,2	20,8	47,9	25,0	3,90	,90
Knowledge and awareness of officials about the inadmissibility of corrupt actions	96		1,0	9,4	31,3	58,3	4,47	,71
Knowledge of foreign languages	97	3,1	3,1	49,5	35,1	9,3	3,44	,83

N = number of participants; M = mean; SD = standard deviation; 1. not at all necessary, 2. slightly necessary, 3. moderately necessary, 4. quite necessary, 5. very necessary.

Out of a total of 30 analyzed items in the domain of knowledge, the Mann Whitney U-test established significant differences between treatment and security workers in 20 of them, which indicate that treatment workers more often than security workers consider the following knowledge important for working in the prison system:

- knowledge of the human rights of prisoners ($U=820.5$, $z=-2.67$, $p< .01$);
- understanding of the concept of gender awareness ($U=754$, $z=-2.95$, $p< .01$);
- knowledge of ethical principles in treating prisoners ($U=496$, $z=-5.18$, $p< .01$);
- understanding of the importance of respecting the dignity of prisoners ($U=545$, $z=-4.70$, $p< .01$);
- knowledge and understanding of the concept of torture and other cruel, inhuman or degrading procedures or punishment ($U=836.5$, $z=-2.44$, $p< .03$);

- knowledge of the purpose of serving a prison sentence (U=713, z=-3.66, p< .01);
- knowledge of bylaws and internal regulations that define the performance of my job (U=800, z=-2.59, p< .03);
- knowledge of procedures for the prevention of suicide and self-harm by prisoners (U=837.5, z=-2.35, p< .03);
- knowledge of the concept of prisoner risk assessment (U=743, z=-3.13, p< .01);
- knowledge of the concept of treatment needs of prisoners (U=458, z=-5.23, p< .01);
- knowledge and understanding of criminogenic risks (U=835, z=-2.30, p< .03);
- knowledge and understanding of protective factors (U=673.5, z=-3.50, p< .01);
- knowledge of general treatment interventions (U=465, z=-5.15, p< .01);
- knowledge of specialized treatment interventions (U=490.5, z=-4.92, p< .01);
- criminological knowledge about the causality (etiology) of committing criminal offenses (U=798, z=-2.47, p< .03);
- knowledge about addictions (U=778.5, z=-2.71, p< .01);
- knowledge about violent behavior (U=737.5, z=-3.00, p< .01);
- knowledge about sexual violence (U=810.5, z=-2.45, p< .03);
- knowledge about suicide and self-harm (U=808.5, z=-2.16, p< .05);
- knowledge and awareness of officials about the inadmissibility of corrupt actions (U=700, z=-3.50, p< .01).

The observed differences can be observed in the context of the specific knowledge required to perform treatment tasks, but also in the context of a higher level of education of treatment workers (in the context of general knowledge), which is also in accordance with the aforementioned Guidelines of the Council of Europe (CoE, 2019), according to which workers with a high level of education (psychology, criminology, social work and law) are expected to have a critical understanding of the theories and principles of working with prisoners. There is also a greater appreciation of the concepts on which treatment work is based (human rights, gender awareness, ethical principles, etc.).

Skills

On average, participants consider the offered skills (table 4) quite necessary for working in the prison system (M_{Total}=4.28). The ability to cooperate with other colleagues in the sector/department, the ability to work in a team, the skills to establish a professional relationship with prisoners and the ability to cooperate with colleagues from other organizational units are skills that, according to the participants, are very necessary for working in the prison system[18]. The results are understandable given that employees within the prison system are expected to cooperate with colleagues in order to successfully realize common goals (Ministry of Justice and Administration, 2021). Furthermore, the importance of staff competence in the context of establishing a professional relationship with prisoners is manifested, among other things, in its effect on the perception of the quality of the social climate in the penal institution, and thus the overall quality of prison life by prisoners (Liebling, 2011). It is worth pointing out that Nascimento et al. (n.d.) find that their participants, within the initial training, consider the following topics extremely important: report writing, substance abuse, safety and use of coercive means, as well as support and staff development topics (e.g. information about available support, stress management and the like). In relation to the observed discrepancy between the existing and necessary topics, the participants of this research mention risk assessment and the mental health of prisoners.

The participants assess the skills for working with female prisoners as the least necessary, which is not surprising considering the small share of women in the Croatian prison system (the share of female prisoners in the total number of people serving prison sentences is between 4 and 5.5% (Kovčo Vukadin and Pleško, 2024)). In the same way, the participants evaluate the skills for working with foreign nationals as less necessary for work in the prison system, which could also be explained by their low representation in the Croatian prison system. According to the "stock" data of the Annual Criminal Statistics of the Council of Europe (SPACE I), in the last five years Croatia has been in the category of low or very low level of prisoners of foreign nationals (Aebi and Tiago, 2020; Aebi and Tiago,

[18] Nascimento et al. (n.d.) in their recommendations based on the conducted research, emphasize the importance of including „soft skills“ in the training of correctional officers. The results of their research also indicate that the participants highly value professional ethics as an important topic within initial training.

2021; Aebi et al., 2022; Aebi et al., 2023; Aebi and Cocco, 2024). In other words, the representation of this category of prisoners in Croatian penal institutions is lower by 5.1% to 25% (low level) or lower by more than 25% (very low level) than the European average (Aebi & Cocco, 2024). In addition to the above, participants consider the skills of designing and implementing specialized treatment interventions to be less important skills for working in the prison system.

Table 4. *Skills needed to work in the prison system (percentages, means and standard deviations)*

Variable	**N**	**%**					**M**	**SD**
		1	**2**	**3**	**4**	**5**		
Writing reports and other documents	95		1,1	12,6	30,5	55,8	4,41	,75
Skills of establishing a professional relationship with prisoners	96	1,0		10,4	20,8	67,7	4,54	,77
Skills of motivating prisoners to achieve the purpose of serving a prison sentence	97	1,0	1,0	16,5	36,1	45,4	4,24	,84
Skills for recognizing stress, trauma and burnout in oneself and colleagues	96		1,0	8,3	36,5	54,2	4,44	,69
Skills for managing one's own reactions in highly emotional (risky) situations	97	1,0		7,2	32,0	59,8	4,49	,72
Skills in designing and implementing specialized treatment interventions	97	4,1	3,1	21,6	36,1	35,1	3,95	1,03
Crisis management skills (e.g. pandemic, earthquake, etc.)	97	1,0		10,3	42,3	46,4	4,33	,75
Management skills in emergency situations	97	1,0		10,3	28,9	59,8	4,46	,76
Skills of de-escalation of conflict situations	96	1,0	3,1	8,3	33,3	54,2	4,36	,85
Skills for maintaining one's own physical safety in interaction with prisoners	97			10,3	37,1	52,6	4,42	,67
Self defense skills	97	1,0		16,5	37,1	45,4	4,26	,81
Skills for working with prisoners with drug addiction	97	2,1	4,1	13,4	44,3	36,1	4,08	,92
Skills for working with alcohol addiction	95		5,3	14,7	44,2	35,8	4,11	,84
Skills for working with prisoners with gambling	96	2,1	3,1	20,8	40,6	33,3	4,00	,93

addiction and other behavioral addictions								
Skills for working with violent prisoners	97	1,0	1,0	16,5	36,1	45,4	4,24	,84
Skills for working with women prisoners	95	12,6	2,1	12,6	44,2	28,4	3,74	1,26
Skills for working with foreign prisoners	96	3,1	5,2	25,0	43,8	22,9	3,78	,96
Mastery of first aid techniques	97		6,2	18,6	41,2	34,0	4,03	,88
Skills of working with a group of prisoners	96		2,1	15,6	40,6	41,7	4,22	,78
Active listening skills (e.g. listening without interrupting the person, focusing on what the person is saying rather than what they have said or are about to say, paraphrasing, asking questions)	96		2,1	11,5	33,3	53,1	4,38	,77
Recognizing symptoms of mental illness in prisoners	97	1,0	1,0	14,4	47,4	36,1	4,16	,79
Ability to detect symptoms of drug addiction in prisoners	97	1,0		17,5	41,2	40,2	4,20	,799
Ability to encourage prisoners to achieve the goals of the individual prison sentence serving program	96	2,1	1,0	19,8	32,3	44,8	4,17	,92
Ability to acquire new knowledge and skills important for working with prisoners	97		4,1	13,4	39,2	43,3	4,22	,83
Ability to use effective techniques (acceptable ways) of coping, handling and managing stress	96	1,0	3,1	9,4	40,6	45,8	4,27	,84
Ability to recognize the corrupt intentions of prisoners	97	1,0	1,0	11,3	36,1	50,5	4,34	,80
Ability to establish and maintain positive relationships with prisoners	97		1,0	15,5	30,9	52,6	4,35	,78
Ability to cooperate with other colleagues in the sector/department	96		1,0	3,1	22,9	72,9	4,68	,59
Ability to cooperate with colleagues from other organizational units (sectors, departments)	96		1,0	7,3	30,2	61,5	4,52	,68
Ability to work in a team	97		1,0	10,3	20,6	68,0	4,56	,72
Ability to think strategically	97	1,0	1,0	14,4	37,1	46,4	4,27	,82

Ability to adapt to unplanned situations and circumstances	97		1,0	9,3	35,1	54,6	4,43	,71
Ability to spot triggers for violent behavior in penitentiary or prison	97		1,0	11,3	28,9	58,8	4,45	,74
Observing and adequately interpreting non-verbal communication (behavior) of prisoners	97			15,5	30,9	53,6	4,38	,74
Ability to understand the prisoner's position	96		2,1	14,6	37,5	45,8	4,27	,79
Ability to respect the human rights of prisoners	97	1,0	1,0	7,2	29,9	60,8	4,48	,76

N = number of participants; M = mean; SD = standard deviation; 1. not at all necessary, 2. slightly necessary, 3. moderately necessary, 4. quite necessary, 5. very necessary.

Out of a total of 36 analyzed skills, the Mann Whitney U- identified significant differences in 25 of them, showing that treatment workers more often than security workers consider the following skills important for working in the prison system:

- skills of establishing a professional relationship with prisoners (U=692, z=-3.80, p< .01);
- skills of motivating prisoners to achieve the purpose of serving the prison sentence (U=762, z=-2.94, p< .01);
- skills in recognizing stress, trauma and burnout in oneself and colleagues (U=840, z=-2.28, p< .03);
- skills in managing one's own reactions in highly emotional (risky) situations (U=705, z=-3.61, p< .01);
- skills in designing and implementing specialized treatment interventions (U=554, z=-4.47, p< .01);
- skills of de-escalation of conflict situations (U=869, z=-2.02, p< .05);
- skills to maintain one's own physical safety in interaction with prisoners (U=781.5, z=-2.87, p< .01);
- skills for working with prisoners with drug addiction (U=650, z=-3.81, p< .01);
- skills for working with prisoners with alcohol addiction (U=613.5, z=-3.89, p< .01);
- skills for working with prisoners with gambling addiction and other behavioral addictions (U=691, z=-3.33, p< .01);
- skills for working with violent prisoners (U=684.5, z=-3.55, p< .01);
- skills of working with a group of prisoners (U=645, z=-3.67, p< .01);

- active listening skills (U=670.5, z=-3.65, p< .01);
- recognition of symptoms of mental illness (U=751.5, z=-3.04, p< .01);
- ability to observe symptoms of the influence of addictive substances in prisoners (U=728.5, z=-3.19, p< .01);
- ability to encourage prisoners to achieve the goals of the individual prison sentence serving program (U=546.5, z=-4.52, p< .01);
- ability to acquire new knowledge and skills important for working with prisoners (U=783.5, z=-2.76, p< .01);
- ability to use effective techniques for dealing with, handling and managing stress (U=825.5, z=-2.41, p< .03);
- ability to establish and maintain positive relationships with prisoners (U=823.5, z=-2.50, p< .03);
- ability to cooperate with colleagues from other organizational units (U=813, z=-2.52, p< .03);
- team work ability (U=885.5, z=-2.20, p< .03);
- ability to adapt to unplanned situations and circumstances (U=865, z=-2.20, p< .03);
- observing and adequately interpreting non-verbal communication of prisoners (U=809, z=-2.63, p< .01);
- ability to understand the prisoner's position (U=787.5, z=-2.62, p< .01);
- ability to respect the human rights of prisoners (U=628, z=-4.28, p< .01).

The observed differences are expected and clearly reflect the treatment orientation of treatment workers, both in terms of working with prisoners, and in terms of the functioning of employees of different services in one penal institution.

Assessment of own competencies for work in the prison system

The participants assessed their own competencies for work in the prison system in relation to the same items for the groups of values, knowledge and skills that were offered to them to assess the importance of the necessary competencies. The participants were asked to estimate how much they personally adopted the stated values, that is, how well they mastered the stated knowledge and skills, whereby the response categories ranged from 1 (insufficient) to 5 (excellent).

Values

Overall, looking at the obtained mean values (table 5), the participants rate their adoption of the offered values as "very good" (M_{total}=4.47). According to their own self-assessment, the participants consider the best adopted values to be respect for the dignity of colleagues and respect for professional and official secrecy, as well as having high standards of personal honesty and integrity. According to the participants, belief in the ability of people to change their behavior stands out as the weakest adopted value that is necessary for working in the prison system.

Table 5. *Assessment of own values necessary for work in the prison system (percentages, means and standard deviations)*

Variable	N	%					M	SD
		1	2	3	4	5		
Belief in people's ability to change behavior	83		6,0	21,7	44,6	27,7	3,94	,86
Respecting the specific characteristics of prisoners (eg race or ethnicity, gender, language, religion, political or other belief, education, state of health, etc.)	82			7,3	39,0	53,7	4,46	,63
Respecting the dignity of colleagues	83			4,8	20,5	74,7	4,70	,56
Respecting the dignity of prisoners	83	1,2		9,6	27,7	61,4	4,48	,77
Possessing high standards of personal honesty and integrity	83		2,4	6,0	30,1	61,4	4,51	,72
Respect for professional and official secrecy (data protection)	83		2,4	2,4	18,1	77,1	4,70	,64
Respect for ethical principles in working with prisoners	82	1,2	2,4	7,3	25,6	63,4	4,48	,83

N = number of participants; M = mean; SD = standard deviation; 1. insufficient, 2. sufficient, 3. good, 4. very good, 5. excellent.

By testing the differences in the assessment of own values with regard to the type of work, it was established that there is a statistically significant difference in only one item. The results show that treatment workers give themselves a higher score on the item "Respect for ethical principles in working with prisoners" than security workers.

Knowledge

The participants rate their acquisition of knowledge (table 6) necessary for working in the prison system as very good on average (M_{total}=4.16). Knowledge of the purpose of serving a prison sentence and understanding the importance of workplace tasks in achieving the purpose of serving a prison sentence are considered excellent. In relation to the offered knowledge items, the participants, in their opinion, have the least knowledge of foreign languages, criminological-victimological knowledge of the phenomenology of crime, knowledge of multiculturalism and knowledge of international standards for serving a prison sentence, with knowledge of foreign languages being the only item with an average rating "good".

Table 6. *Assessment of own knowledge required for work in the prison system (percentages, means and standard deviations)*

Variable	N	%					M	SD
		1	2	3	4	5		
Knowledge of the human rights of prisoners	83			6,0	45,8	48,2	4,42	,61
Understanding the concept of gender awareness (the ability to see society from the position of the gender roles of men and women and their needs) and sensitivity	82		4,9	11,0	41,5	42,7	4,22	,83
Knowledge of ethical principles in the treatment of prisoners	83			9,6	41,0	49,4	4,40	,66
Understanding the importance of respecting the dignity of prisoners	83			10,8	31,3	57,8	4,47	,69
Knowledge and understanding of the concept of torture and other cruel, inhuman or degrading treatment or punishment	83		1,2	10,8	25,3	62,7	4,49	,74

Knowing the purpose of serving the prison sentence	83	1,2		3,6	28,9	66,3	4,59	,68
Understanding the importance of the duties of my workplace in achieving the purpose of serving the prison sentence	83		2,4	4,8	31,3	61,4	4,52	,70
Knowledge of international standards (Mandela Rules and European Prison Rules) for serving prison sentences	83	3,6	4,8	20,5	44,6	26,5	3,86	,99
Knowledge of legal regulations important for performing the duties of my workplace	82			9,8	31,7	58,5	4,49	,67
Knowledge of by-laws and internal regulations that define the performance of my job	82		2,4	11,0	36,6	50,0	4,34	,77
Knowledge of the protocol (method of action) for dealing with emergency situations (escape, suicide, self-harm, death, fire, riot, hostage situation, refusal to take food)	82		3,7	17,1	32,9	46,3	4,22	,86
Knowledge of different forms of security in the prison system (static: walls, barriers, locks; procedural: procedures that maintain security and dynamic security: developing positive professional relationships) and their basic principles	81	1,2	4,9	14,8	39,5	39,5	4,11	,92
Knowledge of procedures for the prevention of suicide and self-harm by prisoners	81	2,5	3,7	16,0	34,6	43,2	4,12	,98
Knowledge of prisoner risk assessment concept	81		4,9	13,6	42,0	39,5	4,16	,84
Knowledge of the concept of treatment needs of prisoners	81	1,2	7,4	11,1	42,0	38,3	4,09	,95
Knowledge and understanding of security risks	80		6,3	11,3	41,3	41,3	4,18	,87
Knowledge and understanding of criminogenic risks	81	1,2	4,9	13,6	40,7	39,5	4,12	,91
Knowledge and understanding of protective factors	81		6,2	13,6	39,5	40,7	4,15	,88
Knowledge of general treatment interventions (work, education, leisure activities)	80	1,3	2,5	13,8	40,0	42,5	4,20	,86
Knowledge of specialized treatment interventions (special treatment programs, educational	80	2,5	5,0	21,3	35,0	36,3	3,98	1,01

and developmental programs, psychoeducation, motivational interviewing, etc.)								
Criminological knowledge about the causation (etiology) of committing criminal offences	81		4,9	27,2	37,0	30,9	3,94	,88
Criminological-victimological knowledge about the phenomenology of criminality	80	1,3	8,8	26,3	42,5	21,3	3,74	,94
Knowledge about addictions (alcohol, drugs, behavioral addictions)	81		4,9	17,3	37,0	40,7	4,14	,88
Knowledge of violent behavior (partner/spousal violence, child abuse, violence against the elderly, violence against other vulnerable groups)	82		4,9	19,5	35,4	40,2	4,11	,89
Knowledge about sexual violence (sexual victimization of children, sexual victimization of adults)	82	1,2	3,7	23,2	32,9	39,0	4,05	,94
Knowledge about stress, trauma and indirect (secondary) trauma	82	1,2	6,1	20,7	39,0	32,9	3,96	,95
Knowledge about suicide and self-harm	80	1,3	5,0	23,8	35,0	35,0	3,98	,95
Knowledge of multi-culturalism (knowledge of value systems of different groups or cultures)	82	3,7	6,1	25,6	34,1	30,5	3,82	1,06
Knowledge and awareness of officials about the inadmissibility of corrupt actions	82	1,2	3,7	7,3	22,0	65,9	4,48	,88
Knowledge of foreign languages	83	4,8	9,6	38,6	30,1	16,9	3,45	1,04

N = number of participants; M = arithmetic mean; SD = standard deviation; 1. insufficient, 2. sufficient, 3. good, 4. very good, 5. excellent.

Out of a total of 30 items used to assess their own knowledge, a statistically significant difference between treatment and security workers was found in only five items. Treatment employees rated themselves better than security employees on the item "Knowledge of general treatment interventions" ($U=574$, $z=-2.18$, $p< .03$), while security employees rated themselves better on the following items:

- knowledge of international standards for serving a prison sentence ($U=632$, $z=-2.04$, $p< .05$);

- knowledge of protocols for dealing with emergency situations (U=558, z=-2.67, p< .01);
- knowledge of different forms of security in the prison system (U=531.5, z=-2.74, p< .01);
- knowledge and understanding of security risks (U=574, z=-2.18, p< .03).

The observed differences clearly testify to the focus of the employees of these two services. The only thing surprising is the better self-assessment of security employees based on their knowledge of international standards. It is possible that the security employees are well acquainted with the standards related to security affairs, while in the area of treatment, these standards are less clearly indicated due to the different national organizations of services in prison systems.

Skills

Overall, the participants rated the acquisition and mastery of the skills necessary to work in the prison system (Table 7) as very good (M_{total}=4.13). The best acquired skills according to the participants are the ability to cooperate with other colleagues in the sector/department, the ability to work in a team, the ability to respect the human rights of prisoners and the skills to establish a professional relationship with prisoners. According to the participants, the weakest adopted skills are mastery of first aid techniques, self-defense skills[19], skills for working with female prisoners and foreign national prisoners. Of all the skills offered, mastery of first aid techniques stands out with the lowest average rating of "good".

[19] Meško et al., (2004) found that employees of the judicial police in the prison system in Slovenia express the need for education, i.e. martial arts training, i.e. self-defense in the sense of increasing competencies.
Koedijk et al. (2019) found an improvement in 9 self-defense skills after training with 28 Dutch prison officers, but a significant number of officers did not show satisfactory results on the second post-test, which indicates the importance of being able to maintain acquired skills in real situations.

Table 7. *Assessment of own skills required for work in the prison system (percentages, means and standard deviations)*

Variable	N	%					M	SD
		1	2	3	4	5		
Writing reports and other documents	82		4,9	13,4	30,5	51,2	4,28	,88
Skills of establishing a professional relationship with prisoners	83		1,2	8,4	28,9	61,4	4,51	,70
Skills of motivating prisoners to achieve the purpose of serving a prison sentence	82	1,2	3,7	17,1	32,9	45,1	4,17	,93
Skills for recognizing stress, trauma and burnout in oneself and colleagues	83		4,8	12,0	42,2	41,0	4,19	,83
Skills for managing one's own reactions in highly emotional (risky) situations	83	1,2	3,6	9,6	48,2	37,3	4,17	,84
Skills in designing and implementing specialized treatment interventions	82	1,2	8,5	20,7	39,0	30,5	3,89	,98
Crisis management skills (e.g. pandemic, earthquake, etc.)	82		4,9	18,3	39,0	37,8	4,10	,87
Management skills in emergency situations	82		7,3	14,6	35,4	42,7	4,13	,93
Skills of de-escalation of conflict situations	82	2,4	3,7	14,6	36,6	42,7	4,13	,97
Skills for maintaining one's own physical safety in interaction with prisoners	83		6,0	18,1	33,7	42,2	4,12	,92
Self defense skills	82	11,0	12,2	20,7	25,6	30,5	3,52	,13
Skills for working with prisoners with drug addiction	82	1,2	4,9	20,7	42,7	30,5	3,96	,91
Skills for working with prisoners with alcohol addiction	82	1,2	4,9	15,9	45,1	32,9	4,04	,89
Skills for working with prisoners with gambling addiction and other behavioral addictions	82	3,7	9,8	24,4	40,2	22,0	3,67	1,04
Skills for working with violent prisoners	81	1,2	6,2	22,2	42,0	28,4	3,90	,93
Skills for working with women prisoners	78	9,0	10,3	20,5	37,2	23,1	3,55	1,21
Skills for working with foreign prisoners	79	2,5	15,2	25,3	36,7	20,3	3,57	1,06

Mastery of first aid techniques	82	4,9	14,6	29,3	29,3	22,0	3,49	1,14
Skills of working with a group of prisoners	81		6,2	17,3	37,0	39,5	4,10	,90
Active listening skills (e.g. listening without interrupting the person, focusing on what the person is saying and not on what they have said or are about to say, paraphrasing, asking questions)	83		3,6	8,4	32,5	55,4	4,40	,79
Recognizing symptoms of mental illness in prisoners	82		2,4	24,4	37,8	35,4	4,06	,84
Ability to detect symptoms of drug addiction in prisoners	82		3,7	14,6	41,5	40,2	4,18	,82
Ability to encourage prisoners to achieve the goals of the individual prison sentence serving program	81	1,2	3,7	19,8	35,8	39,5	4,09	,92
Ability to acquire new knowledge and skills important for working with prisoners	83		4,8	19,3	30,1	45,8	4,17	,91
Ability to use effective techniques (acceptable ways) of coping, handling and managing stress	83	2,4	6,0	13,3	47,0	31,3	3,99	,96
Ability to recognize the corrupt intentions of prisoners	82	2,4	4,9	13,4	26,8	52,4	4,22	1,02
Ability to establish and maintain positive relationships with prisoners	82		2,4	12,2	30,5	54,9	4,38	,796
Ability to cooperate with other colleagues in the sector/department	83			4,8	27,7	67,5	4,63	,58
Ability to cooperate with colleagues from other organizational units (sectors, departments)	83			7,2	36,1	56,6	4,49	,63
Ability to work in a team	83		1,2	7,2	24,1	67,5	4,58	,68
Ability to think strategically	83		1,2	15,7	41,0	42,2	4,24	,76
Ability to adapt to unplanned situations and circumstances	83		2,4	13,3	38,6	45,8	4,28	,79
Ability to spot triggers for violent behavior in penitentiary or prison	83		3,6	13,3	32,5	50,6	4,30	,84
Observing and adequately interpreting non-verbal	82		1,2	12,2	42,7	43,9	4,29	,73

communication (behavior) of prisoners								
Ability to understand the prisoner's position	82	1,2	1,2	12,2	41,5	43,9	4,26	,81
Ability to respect the human rights of prisoners	83			8,4	26,5	65,1	4,57	,65

N = number of participants; M = mean; SD = standard deviation; 1. insufficient, 2. sufficient, 3. good, 4. very good, 5. excellent.

Differences in self-assessed values between treatment and security workers are significant in only six items. Treatment workers are evaluated themselves better than security workers on two items: "Active listening skills" (U=647.5, z=-1.99, p< .05) and "Ability to respect prisoners' human rights" (U=651, z =-2.07, p< .05), while security employees are rated themselves better on the following items:

- crisis management skills (U=588, z=-2.29, p< .03);
- management skills in extraordinary (incidental) situations (U=562.5, z=-2.55, p< .03);
- self-defense skills (U=234.5, z=-5.64, p< .01);
- mastery of first aid techniques (U=404.5, z=-4.05, p< .01).

These differences clearly indicate the different content of the primary education of security personnel for work in the prison system, which is primarily focused on security.

Attending education related to work in the prison system

The participants were asked how often they participate in education related to work in the prison system. The data presented in table 8 show that the largest number of participants rarely participates in education, while the smallest number states that they participate often. A significan difference between treatment and security employees was observed, showing that treatment employees participate in trainings much more often than security employees. This result may not reflect the actual desire of employees for training, but the ability of the penal institutions to allow employees to take leave from work for this purpose due to the lack of employees[20], i.e. to ensure the regular functioning of the penal institution.

[20] According to the Report on the State and Operation of Penitentiaries, Prisons, Correctional Institutions and Centers for 2022 (Government of the Republic of Croatia, 2024), 77% of the required number of employees was filled in security jobs, and 68% in treatment jobs.

Table 8. *Attending education related to work in the prison system*

	f (%)			
	Treatment	**Security**	**Total**	
Never	5 (12,5)	24 (36,9)	29 (27,6)	χ^2= 31,409 p<,01
Rarely	5 (12,5)	28 (43,1)	33 (31,4)	
Periodically	20 (50,0)	10 (15,4)	30 (28,6)	
Often	10 (25,0)	3 (4,6)	13 (12,4)	

The need for the development of new or improvement of existing competences for work in the prison system

Table 9 shows that more than two-thirds of the participants express the need for additional education to refresh their knowledge, address current issues in the field of serving prison sentences and specific topics. No significant differences were found between treatment and security workers in the stated need for additional training. The above is not surprising given that nowadays previously acquired knowledge quickly becomes obsolete and learning becomes a continuous process that is manifested in the concept of lifelong learning (Schuckertné, 2018; according to Miklósi, 2023).

Table 9. *Expressed need for education (refreshing knowledge, current issues in the field of serving prison sentences, specific topics)*

	f (%)			
	Treatment	**Security**	**Total**	
No	10 (25,6)	22 (34,9)	32 (31,4)	χ^2= ,963 p>,05
Yes	29 (74,4)	41 (65,1)	70 (68,6)	

Conclusion

The aim of this research was to gain insight into the competencies in the prison system and determining the differences in the assessment of necessary and self-assessment of own competencies between treatment

and security staff. A total of 106 employees of four penal institutions in Croatia participated in the research. In relation to the research questions, the results are summarized below.

In relation to the evaluation of the necessary competencies for work in the prison system, the following was determined:

- The most important value for work in the prison system, according to the participants, is respect for professional and official secrecy, that is, data protection (treatment workers consider all analyzed values more important than security workers);
- The most important knowledge for working in the prison system are, according to the participants, knowledge of legal regulations, knowledge of protocols for dealing with emergency situations, knowledge of the purpose of serving a prison sentence and knowledge of suicide prevention procedures (differences between treatment and security workers were found in 20 out of a total of 30 analyzed knowledge, and can be understood in the context of differences in the jobs of treatment and security workers, as well as differences in the level of education between these groups of workers);
- The participants rated the so-called "relational" skills as the most necessary - the ability to cooperate with other colleagues, the ability to work in a team, the skills to establish a professional relationship with prisoners (differences between treatment and security staff were found in 25 out of a total of 36 analyzed skills, whereby the skills related to treatment work stand out, as well as the related skills that treatment workers rate as more important than security workers).

In relation to the assessment of one's own competencies for work in the prison system, the following was observed:

- The values on which the participants have the best self-assessments are respect for the dignity of colleagues, respect for professional and official secrecy, and possession of high standards of personal honesty and integrity (treatment workers are rated better in respect of ethical principles when working with prisoners);
- The knowledge on which the participants give themselves the highest marks is knowing the purpose of serving a prison sentence and understanding the importance of the duties of their workplace in achieving the purpose of serving a prison sentence (the established differences between treatment and security workers mainly reflect differences in the type of work they perform);
- The participants are rated themselves best on the so-called "relational" skills - the ability to cooperate with colleagues, the ability to work in a

team, the skills to establish a professional relationship with prisoners (treatment workers rated themselves better in the skills of active listening and the ability to respect human rights, while security employees rated themselves better in in the skills that are characteristic of "first line" workers - managing crisis and emergency situations, self-defense and mastering first aid techniques).

In relation to education related to work in the prison system, the following was observed:

- The largest number of participants state that they rarely attend trainings (treatment workers attend trainings more often than security workers);
- Most participants express the need for additional training (there is no difference between treatment and security workers).

The obtained results give us a picture of the perception and self-assessment of treatment and security workers about their competences for work in the Croatian prison system. In the context of making any conclusions based on the obtained results, it is necessary to refer to the limitations of the conducted research. The first limitation relates to the size of the sample - the penitentiary in Lepoglava and the prison in Zagreb represent the two largest penal institutions in Croatia, which could result in a kind of "distortion" of the obtained results. Also, the size of the sample and its nature (convenience sample) does not allow the generalization of the results for all employees of the Croatian prison system. In terms of methodology, it is important to highlight the large number of items that could have a demotivating effect on the participants, as well as the fact that the items largely reflected the idea of rehabilitation. Furthermore, it is possible that the participants gave (both in the sense of the assessment of the necessary and in the sense of the assessment of their own) socially desirable answers.

Regardless of the mentioned limitations, the obtained results indicate a favorable situation in the analyzed sample in relation to the assessment of the necessary and evaluation of one's own competencies for work in the prison system. In order to obtain more general results, it would certainly be necessary to continue the research on this topic, along with the methodological refinement of the instrument, as well as the inclusion of a qualitative research component, because without competent experts, the prison sentence stops at an exclusively retributive function.

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Review Paper

The Extradition Legal System of China

Yang Chao[1]

This paper outlines the extradition law system in China, focusing on bilateral treaties for extradition that have been signed and ratified. It articulates the fundamental principles of China's extradition law and the diplomatic commitments involved in the extradition process. Furthermore, the analysis highlights advancements in legal frameworks, particularly from the prospect of case involved with life-imprisonment, detailing successful cooperation through specific case studies with European nations in the field of extradition.

Keywords: *Extradition, Life-imprisonment, Human Right, International Cooperation*

1. The Legal Framework of International Judicial Cooperation in Criminal Matters in China

In the contemporary landscape of globalization, the criminal sphere has evolved in conjunction with the increasing interconnectedness of nations.[2] Indeed, as movement about the world becomes easier and crime takes on a larger international dimension, it is increasingly in the interests of all nations that suspected offenders who flee abroad should be brought to justice.[3] Transnational crime - encompassing offenses such as human trafficking, drug smuggling, and cybercrime - demands attention not only for its scope and impact but also for the complexities it introduces in law enforcement and judicial processes. As criminals exploit international

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[2] Chao, Y. (2021). The human right safeguard for person extradited in China. *Right to life*. Belgrade: Provincial Protector of Citizens – Ombudsman, Institute of Criminological and Sociological Research

[3] Griffith, G., Harris, C. (2005). Recent developments in the law of extradition. *Melbourne Journal of International Law*, *6*(1), 33-54.

boundaries to evade justice, the need for robust judicial cooperation and effective extradition mechanisms has become paramount. In other words, more offences contain transnational features, which including the fugitives flee abroad, the crimes committed or the consequences of offences in different countries, then to deal with these offences, the demands for judicial cooperation and extradition requirements is increasing.

International law is the basis for international community, the rule of law is essentially a mechanism for implementing natural law standards on human rights in international law and in national legislation[4]. In these years, China played active legislation progress in the field of international judicial assistance in criminal matters, on 26th August 1993 China signed the first bilateral extradition agreement with Thailand. This agreement represented the first step in the development of collaborative relations on extradition with other countries and led to the beginning of a process of harmonization of the Chinese legal system with the international rules on judicial cooperation in criminal matters. Till now, China has signed bilateral extradition agreements with 46 countries, including 14 European countries[5].

1.1 The Law of Extradition of People Repubblica of China

On 28th December 2000, the Permanent Commission of the National Popular Assembly enacted the Extradition Law. Besides the rules of substantive and procedural law related to extradition, A significant step forward in the development of contemporary Chinese legislation on international judicial cooperation is represented by the fact that the Extradition Law do no longer identify the extraditable person as an "object", at the mercy of the political and diplomatic transactions concluded between the requesting country and the requested one. The extraditable person is a legal entity in the process. Plus, as in the common criminal procedure, the extraditable person benefits from the protection of fundamental rights in the passive extradition process.

[4] Kambovski, V. (2018). Natural Rights, Legitimacy of Laws and Supranational Basis of Unlawfulness. *Yearbook Human Right Protection "From Unlawfulness to Legality"* (pp. 31-51). Belgrade: Provincial Protector of Citizens – Ombudsman, Institute of Criminological and Sociological Research

[5] http://treaty.mfa.gov.cn/Treaty/web/list.jsp?nPageIndex_=1&keywords=%E5%BC%95%E6%B8%A1&chnltype_c=all accessed on 5.10.2024.

1.2 The Law of International Judicial Assistance in Criminal Matters of People Republic of China

On October 26, 2018, the Sixth Session of the Standing Committee of the 13th National People's Congress voted to adopt the Law of the People's Republic of China on International Criminal Judicial Assistance. The assistance refers to providing mutual support when China and other countries deal with criminal cases, including legal document delivery, investigation and evidence collection, freezing, confiscating and recovering assets, as well as transfer and management of offenders, the law stipulated. The law represents a significant step forward in international cooperation, which provided solid legal basis, not only for criminal justice practitioners, but also for the persons suspected and accused in cross-border criminal proceedings. This reflects positive developments on the respect of fundamental rights and individual freedoms, which are a pre-condition for future cooperation in criminal matters. Also, Chapter VI of the Supervisory Law refers international Cooperation against Corruption, clarifies many contents of anti-corruption work and cooperation between the National Supervisory Commission and other countries, regions and international organizations, and provides an important legal basis and procedural guarantee for international person sought and asset recovery of corruption.

1.3 The System of Exanimation of Extradition in China

From the domestic law perspective, extradition may be viewed as part of the criminal process, with the emphasis on the fugitive's rights[6], and the human right protection shall be respected by all of States in the whole process.

The extradition law of China introduced a system of double verification on extradition requests, in other words a joint administrative and judicial examination system. The State Council, which is the Chinese supreme executive body, is in charge of the administrative control and it exerts its power though the Minister of Foreign Affairs. Differently, the judicial control is exerted by the Supreme Court and the Superior Court which is appointed by the Supreme Court itself. The warrant issued by the superior courts in the proceedings for passive extradition has to be verified and confirmed by the Supreme Court. During both the judicial and the administrative

[6] Williams, S. (1992). Human Rights safeguards and International Cooperation in Extradition: Striking the Balance. *Criminal Law Forum, 3*(2), 191-224.

examination, the competent authority has the veto right, that is the power to reject the extradition request, and the decision made on the basis of the veto right is immediately effective.

2. Principles in the Extradition Process

In the sense of criminal law the protection of life represents the fundamental dimension of criminal law protection. Extradition as an especial process of criminal procedural, involved with the cooperation between two judicial sovereignty, which needs more emphasized on the right safeguard. However, the crucial issue that arises here is that a foreign legal system is not unjust just because is different.[7]

2.1 Grounds for Deny the Extradition Decision

As the UN model treaty listed the grounds may and shall be deny the extradition request, which can be divided to two parts, obligations grounds and optional grounds. In the extradition law of China and the bilateral treaties in China, all of them clearly stipulate the grounds that may and shall deny extradition request because of the request contains the risk that against the person extradited' basic right. In general, these grounds could be catalogued as three groups, firstly, the extradition request against human treatments, such as once the request been approved, the person extradited would be subjected to torture or other cruel, inhuman or humiliating treatment or punishment when he/she back to the requested country or he/she already been thought above inhuman treatment. Secondly, the extradition request is based on unprejudiced opinions, like the political opinion or region grounds, also includes that the person extradited has been granted asylum status. Thirdly, in particular consider the person extradited physical condition if the extradition may results in harmful impact on healthy condition.

By these grounds, we can see that in the law and treaties in China, the extradition process and final decision all based on the spirt of human right safeguard, if the requirement may result in damages to human right, against the basic right, it would be denied.

[7] *Ibidem.*

2.2 Dual Criminality

The dual criminality means that the offense must be considered criminal in both states. The crucial factor is whether the conduct is viewed as criminal in both states and there is a sufficiency of evidence—usually from the perspective of the requested state[5]. The UN Model Treaty on Extradition, for example, provides that double criminality is met despite differences in denomination, categorization and in the elements of the compared offences. Obey with the dual criminality is a fundamental principle in extradition process, there are various essential conditions for extradition respected in most treaties and domestic laws.

In light of what has been talked about the double criminality, if a crime is listed in the treaty some states take the view that that listing is determinative of extraditability and double criminality is not required[8], the approach taken in China is by clearly explain the requirement for double criminality, nor listed the crimes that shall be decisive for extradition in treaties. In the treaty between China-France on extradition, article 2 refers to the extraditable offences, which stipulates that any act which constitutes an offence under the laws of both States shall be an extraditable offence, the act whether commit crimes not depend on whether the offence belongs to the same certain of crime or the specific crime, but shall according to the laws of requesting or requested country. Also, we can find the similar articles in other bilateral treaties between China and other countries for the dual criminality.

2.3 Rules of Specialty

Rule of specialty in the extradition is another fundamental way that protect human right, with the binding of specialty principle, the person extradited would not suffer other unjust accusing. The rule sets an obligation to the requesting State that avoid to arbitrary criminal charging to the person extradited. If the specialty rule were not given effect, it would negate the whole worth of the extradition procedure and vitiate any safeguards for the fugitive[9].

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[8] Boister, N. (2018) *Global Simplification of Extradition: Inter-Views with Selected Extradition Experts in New Zealand, Canada, The US and EU. Criminal Law Forum,* (29), pp. 327–375.

[9] Williams, S. (1992). Human Rights safeguards and International Cooperation in Extradition: Striking the Balance. *Criminal Law Forum, 3*(2), 191-224.

In the extradition law of China, article 14th expressed the rule of specialty, the Requesting State shall make the following assurances when requesting extradition: no criminal responsibility shall be investigated against the person in respect of the offences committed before his surrender except for which extradition is granted, nor shall that person be re-extradited to a third state, unless consented by the People's Republic of China.

With stipulated the rule of specialty, the article also with an exception provision to the specialty, in the circumstance that extradited to the Third State with consent of the China or the person extradited still stay in the requesting country or voluntarily back to it in certain period. Besides the law, in the treaty between China and Portugal on extradition, article 14 is clearly stipulated that the person extradited to the execution of sentence in the requesting party for an offence committed by that person before his surrender other than that for which the extradition is granted nor shall that person be re- extradited to a third State.

3. Regulations on Life Imprisonment in Chinese Domestic Law

3.1 The Life Imprisonment Stipulates in Criminal Code of China

Article 46 of the Criminal Law of the People's Republic of China defines life imprisonment primarily as the deprivation of personal freedom for life. However, due to provisions regarding sentence reduction and parole, in practice, life imprisonment does not necessarily result in lifelong confinement. In China, individuals sentenced to life imprisonment retain the hope of reintegrating into society and are not destined to despair. Those sentenced to life imprisonment can have their sentences reduced or be granted parole if they demonstrate genuine efforts to reform. "The key is for them to strive for it themselves." Therefore, a life sentence does not equate to a prisoner being locked away until death, leaving them hopeless about their future. On the contrary, it can motivate them to reform in pursuit of sentence reduction and parole. In terms of actual enforcement, since the vast majority of prisoners are typically eligible for sentence reductions or parole based on their rehabilitation efforts, the occurrence of individuals being imprisoned for life without any possibility of reduction or parole is quite rare. This practice is largely consistent with that of most countries abroad, where life sentences do not equate to a literal life term.

Certainly, the application of this alternative measure is subject to very strict

limitations. On one hand, the eligible subjects are limited exclusively to those convicted of particularly severe cases of embezzlement or bribery that result in a suspended death sentence; it does not apply to other serious crimes. Therefore, life imprisonment is not established as a general rule in the General Principles, but rather specified in the Detailed Provisions concerning sentencing for embezzlement and bribery offenses, thus maintaining the overall stability of the penal system. On the other hand, there are requirements regarding the circumstances of the crime. Life imprisonment does not apply to all offenders sentenced to a suspended death sentence for embezzlement or bribery; instead, the people's courts decide specifically whether to apply it based on the circumstances of the offense and other factors.

In terms of substantive law, the life imprisonment stipulated in China's Criminal Law does not mean that reduction of sentence or parole cannot be executed. According to Article 78 of China's Criminal Law, which outlines the "conditions and limits for sentence reduction": criminals sentenced to control, detention, fixed-term imprisonment, or life imprisonment may have their sentences reduced during execution if they strictly adhere to prison regulations, accept educational reform, demonstrate genuine remorse, or show meritorious conduct. Sentence reduction should be granted for any of the following significant meritorious acts:

(1) preventing others from committing serious criminal activities;

(2) reporting major criminal activities inside or outside the prison that are verified to be true;

(3) making inventions or significant technological innovations;

(4) selflessly saving others in daily production and life;

(5) showing outstanding performance in resisting natural disasters or handling major accidents;

(6) making other significant contributions to the country and society.

According to Article 78 of the Chinese Criminal Law, the standards for reducing life imprisonment and fixed-term imprisonment in our country are the same, and different levels of reduction are established. The most fundamental requirement for a reduction in sentence is compliance with prison regulations and acceptance of education and rehabilitation. This aligns with what the ECHR indicates in its guidance on cases regarding the rights of prisoners under the European Convention on Human Rights, which states that the execution of life imprisonment should reflect the goal of re- education for reintegration into society. At the procedural law level, Article 273(2) of the Criminal Procedure Law of our country stipulates that for criminals sentenced to control, detention,

fixed-term imprisonment, or life imprisonment, if they demonstrate genuine remorse or meritorious conduct during their sentence, the executing agency should submit a proposal for sentence reduction or parole to the People's Court for review and decision, with a copy of the proposal sent to the People's Procuratorate. The People's Procuratorate can submit written opinions to the People's Court. This provision clearly indicates that in our country, the reduction of life imprisonment and fixed-term imprisonment, as well as parole, are supervised by the executing authority based on the behavior of the convicted person during their sentence. If there are signs of remorse or meritorious performance that meet the legal standards for reduction of sentence or parole, the executing authority has the responsibility to submit a recommendation, which the court will review according to legal procedures. There are established legal procedures for the reduction of sentence and parole for life imprisonment. In addition, regarding specific issues related to sentence reduction, in 2012, the Supreme People's Court issued the "Regulations on Several Issues Concerning the Application of Law in Handling Sentence Reduction and Parole," in which Articles 24 to 26 specifically outline the materials required for courts to hear cases of sentence reduction and parole, the public disclosure of such cases, and the methods of adjudication. Article 26 states that written hearings are generally applicable to cases of sentence reduction and parole, while special circumstances, such as significant meritorious performance, may warrant a court hearing. This corresponds to the provisions of Article 78 of China's Criminal Law, indicating that life imprisonment in Chinese law has the potential for statutory sentence reduction. The core criteria for considering sentence reduction are the inmate's compliance with prison regulations and their demonstration of remorse.

3.2 The Practice of Life Imprisonment Impact on the Extradition Case of China

In the past, in the extradition practices between China and European countries, the Audiencia Nacional (National Court) of Spain has recognized the possibility of parole for life sentences in its extradition cooperation with China. In its judgment No. 24/2014, dated May 19, 2014, it pointed out: "Conditions for parole, such as those specified in Article 78 of the Criminal Law of the People's Republic of China - accepting education, undergoing character correction, complying with prison regulations, demonstrating remorse, and performing meritorious deeds—are also generally stipulated in the legislation of various countries, including

Spain, as conditions for obtaining preferential treatment in the execution of sentences. The relevant provisions of the Criminal Law of the People's Republic of China state that the people's courts shall respond to individuals who show genuine remorse or perform meritorious deeds and are responsible for ruling on issues of parole, which means that the decision on parole is made by judicial authorities established under the constitutional system of China and can be influenced by the offender's demonstration of remorse". Ultimately, the Spanish National Court concluded: "In summary, Chinese legislation has provided for the modification of life sentences, allowing such penalties to be shortened and no longer considered life imprisonment, thereby concluding that the request for extradition made by the relevant authorities in China concerning the appellant does not violate the Spanish Constitution." It is evident from this conclusion by the Spanish National Court that the ordinary life imprisonment stipulated in Chinese criminal law contains substantive and procedural regulations for parole, and a sentence of life imprisonment does not absolutely imply a lifelong incarceration. Such life imprisonment meets the standards of human rights protection stipulated in Article 3 of the Convention and does not fall under the category of inhuman or degrading punishment that is non-paroleable.

Life imprisonment includes fixed-term imprisonment. According to Article 78 of our Criminal Law, both life imprisonment and fixed-term imprisonment have the possibility of legal reduction of sentence, and this possibility is mandated by law rather than being optional. Our country provides for two situations in which a sentence can be reduced, both of which are mandatory reductions or parole as stipulated by law. Firstly, concerning the understanding of sentence reduction, a convict who abides by prison regulations and does not commit new or overlooked offenses is entitled to a legal review opportunity for sentence reduction. This is in line with the practical aspects highlighted by the ECHR, which states that individuals sentenced to life imprisonment should have access to judicial review opportunities for sentence mitigation within their home country's judicial system upon return. The legal provision in our Criminal Law regarding the expression of "repentance" is reflected in the convict's compliance with prison rules and their acceptance of education and rehabilitation during incarceration, without any additional legal obligations or preconditions required for sentence reduction.

In addition, the judicial interpretation in our country has further clarified the applicable standards for the possibility of sentence reduction. The Supreme People's Court's 2016 "Regulations on the Specific Application of Laws for Handling Sentence Reduction and Parole Cases" (hereinafter referred to as the "Regulations") stipulates in Article 3 that the expression of genuine

remorse refers to the simultaneous fulfillment of the following conditions:
(1) confessing guilt and expressing remorse;
(2) complying with laws, regulations, and prison rules, and accepting educational reform;
(3) actively participating in ideological, cultural, and vocational education; and
(4) actively engaging in labor and striving to complete labor tasks.
This judicial interpretation clarifies that the specific demonstration of remorsefulness is the compliance of inmates with prison rules and the management norms of the prison environment. Furthermore, the 2021 "Opinions on Strengthening the Substantive Hearing of Sentence Reduction and Parole Cases" issued by the "Two Highs and Two Ministries" (hereinafter referred to as the "Opinions") stipulates in Article 5 that for those eligible for sentence reduction, they must meet the assessment criteria of prison rules, specifically complying with the rules and accepting educational reform. It emphasizes that as long as inmates comply with prison rules and have not violated any regulations, they can achieve sentence reduction through the assessment system in practice.
Secondly, regarding the understanding of circumstances that warrant a sentence reduction, the criminal law of our country stipulates several significant circumstances under which a sentence reduction is applicable. If a convicted person exhibits behaviors specified in the provisions during their imprisonment, it constitutes a special circumstance for sentence reduction. Article 6 of the "Regulations" clarifies the specific extent of sentence reductions, providing a greater reduction for significant meritorious conduct and other special circumstances. The "Opinions" state that significant circumstances require specialized evidence to be proven. Considering that significant circumstances can lead to a larger sentence reduction according to our criminal law, a more detailed assessment process has been established. Only those significant circumstances that meet the legal standards can be recognized. This also confirms that in our judicial practice, individuals serving fixed-term or life sentences have a legal possibility of obtaining a sentence reduction as long as they comply with prison regulations. Furthermore, from the perspective of procedural law, our country also has a legal procedure for reducing life sentences, and this procedure operates as an automatic mechanism. As long as the inmate meets the criteria for sentence reduction, they can apply to the court for a reduction without needing to fulfill additional conditions.

Conclusion

China's judicial system can ensure that criminal suspects and defendants fully enjoy all basic procedure rights, including the right to defense, and receive a fair and impartial trial, and will not be subjected to inhuman or degrading treatment or extorted confessions by torture. China's detention system has strict procedures and restrictions, and any extension of the detention period must go through strict approval procedures. China's law clearly provides for a system of diplomatic assurances and a mechanism to ensure their full implementation. For the extradited person who finally extradited back to China would not face the risk of inhuman and degrading treatment or unfair trial after extradition.

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Review Paper

Legal nature and conditions of work of prisoners – Labor Law perspective[1]

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The work of prisoners is one of the essential elements of prison treatment, aimed primarily at improving their employability and successful social reintegration. That distinctive feature of the prisoner's work, due to which it is not subject to labor law, but to the criminal sanctions enforcement law does not, however, represent an obstacle for bringing the working conditions of prisoners closer to the working conditions of employees in the general regime of employment relationships. Therefore, the paper discusses the issue of the legal nature of prisoners' work, including situations in which a subject of private law appears as the beneficiary of their work. This included consideration of the legal regime of prisoners' work in European countries, as well as in international and European law, especially in terms of voluntariness, remuneration and working conditions of prisoners, and the enjoyment of trade union freedom and other collective rights. It was concluded that bringing the working conditions of prisoners and employees closer together is necessary, since the instruments for the protection of economic and social rights do not exclude prisoners from their scope of application. They are, therefore, the holders of all rights and freedoms, except for the rights and freedoms that are expressly limited to them by law. On the other hand, the isolation and dependence of prisoners on the administration of the institution for the execution of criminal sanctions, as well as the fact that they are excluded from the area of personal scope of labor and social legislation, facilitates the exploitation of their work and other abuses. In this sense, in contemporary science, as well as in the legislation of many European countries, the "normalization" of work in prisons is rightly affirmed, among other things, because the work of prisoners cannot achieve its most important goal - improving their employability and integration into the

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labor market after the sentence served - if the prisoners work without labor rights. In contemporary low, working in such conditions is not acceptable, and it certainly will not endear the prisoners to society, nor encourage them to respect legal and social norms.

Keywords: *Prisoner's work; Working conditions; Collective labor rights; "normalization" of prisoners' work*

Introduction

Persons serving a prison sentence perform a number of activities. They are connected with the daily functioning of the institution for the execution of criminal sanctions (maintenance of hygiene, cooking, laundry, maintenance of gardens, etc.), and can also be aimed at education, training, physical activity and recreation (Auvergnon, 2007, p. 75). In addition, prisoners often perform work that has a production or service character, namely in workshops, factories, plants and other premises of the institution for the execution of criminal sanctions. Work, therefore, represents an integral part of the prison regime, with the fact that, throughout history, its objectives and functions have changed. In this sense, the rep*ressive function of the prisoner's work* was first observed, and it was viewed as a means for "repentance and expiation of sins", that is, as a punishment or a supplementary element of punishment. This was followed by the *moralizing function of work*, which John Howard aptly described with the maxim: "Make men diligent and they will be honest". This is followed by the emphasis on the *utilitarian value of work*, which is related to the possibility that the prisoner "covers" the costs of serving the sentence with his work (Pinatel, 1945, p. 117; Roux, 1902, p. 11-12), as well as that part of the compensation be used to support the members of the prisoner's family, to save funds for living in freedom, i.e. to pay off the debts that the prisoner has Mantouvalou, 2023, p. 50). Finally, the *disciplinary function of work* should be noted, since it contributes to ensuring discipline in prison, because "useless spending of time, leisure and boredom, even in better conditions than prison grayness, leads to conflicts, clashes, and even more severe forms of violence" (Knežić, 2011, p. 148) - *Otia dant vitia*. Today, however, the prevailing opinion is that work contributes to the *rehabilitation of prisoners and their social reintegration after release*, thus mitigating the risk of repeating criminal acts (*cf*: Baader, Shea, 2024; Felczak, 2023, p. 79-82). This means, more precisely, that in the modern time, the work of prisoners is not part of their punishment, which is why it should represent a right rather than a duty, although in practice, there are

often no conditions for the full enjoyment of freedom of work (Mantouvalou, 2023, p. 50). Also, it is not excluded that only monotonous, repetitive and pointless jobs will be available to prisoners, the performance of which cannot be perceived as anything other than punishment. This is all the more so since the refusal of those jobs can affect the volume of visits by the prisoners' family members, their opportunities for recreation and the like (Mantouvalou, 2023, p. 50-51).

The main task of the state, in this sense, consists in providing a sufficient number of suitable jobs and in organizing the work of prisoners in a way that is as similar as possible to the organization and methods that are valid for work outside the prison (*cf*. Charlot, Weissenbacher, 2014). At the same time, the state has an obligation to protect prisoners from exploitation and other abuses, which are particularly pronounced if the beneficiaries of their work are subjects of private law. This is because in the latter case there is a risk that the objectives of the prisoner's work, which concern rehabilitation and reintegration, will be overcome by efforts to achieve and maximize profits. The work of prisoners should, therefore, be focused primarily on the acquisition and development of knowledge, abilities and skills that can be useful to these persons when looking for a job on the free market, as well as for maintaining employment.

Numerous factors influenced the outlined development of prisoners' work functions. Among them, after the Second World War, the process of internationalization of human rights appears, since the relevant international impulses significantly influenced national legislation and practice. This, in particular, applies to the adoption of the Standard Minimum Rules for the Treatment of Prisoners which confirmed that the work of prisoners „shall be such as will maintain or increase the prisoners' ability to earn an honest living after release“ i.e. that „the interests of the prisoners and of their vocational training, however, must not be subordinated to the purpose of making a financial profit from an industry in the institution“. And under the auspices of the Council of Europe, work is considered „an important and significant element of the training and rehabilitation of prisoners, and a significant segment of the operational management of penitentiary institutions“, which is why „as far as possible, the work provided shall be such as will maintain or increase prisoners' ability to earn a living after release. [...] „Although the pursuit of financial profit from industries in the institutions can be valuable in raising standards and improving the quality and relevance of training, the interests of the prisoners should not be

subordinated to that purpose".[2] In this contribution, we start from the premise that working prisoners should be provided with protection that is similar to the labor law protection of employees in the general regime of employment relationships, of course, while respecting the peculiarities of the work of prisoners, above all those related to security considerations, since a working prisoner is, first of all, a prisoner, and only then a worker (Schmitz, 2022, p. 86). Prisoners must, namely, enjoy basic social rights, especially bearing in mind that they are a category of persons who, since they do not enjoy freedom of movement, do not have access to jobs available on the open market, nor do they have the opportunity to change jobs they are not satisfied with (Mantouvalou, 2023, p. 51).

1. Types of employment of persons sentenced to imprisonment in contemporary legal systems

1.1. Legal basis and qualification of work engagement of prisoners

Contemporary legal systems know mutually very different solutions related to the work of prisoners. However, the common feature is that in European countries, the work of prisoners is regulated by legislation on the execution of criminal sanctions or criminal procedural legislation, and does not presuppose entering into an employment contract. The legislation of a smaller number of countries recognizes, however, the possibility of contractually regulating the relationship between the administration of the institution for the execution of criminal sanctions (or an *ad hoc* body, which ensures the training and employment of prisoners) and the prisoner who works for the account of the administration, and in some cases the conclusion of a tripartite contract, which, in addition to these persons, is also concluded by the beneficiary company, with subsidiary or corresponding application of labor legislation (Loy, Fernández, 2007, p. 179–181; Soler Arrebola, 2007, p. 201–207).

Thus, for example, recent reforms in France, which began to take effect in May 2022, abandoned the previous solution according to which the work of prisoners was organized on the basis of an act of engagement (fr. *acte d`engagement*), which was formally signed by the head of the institution for the execution of criminal sanctions and a prisoner, but essentially it had the effect of a unilateral administrative act (Amilhat, Bowl, 2022, p. 248–251). Instead, a contractual relationship was introduced between the

[2] Recommendation Rec(2006)2 of the Committee of Ministers to member states on the European Prison Rules, rules 26.3. and 26.8.

working prisoner and the entity for which the prisoner works, i.e. user of prisoner's labor. The latter subject, however, is not denoted by the term employer, but by the term giver of the order (fr. *donneur d`ordre*), which can be an institution for the execution of criminal sanctions (the so-called general service, which implies that the administration for the execution of criminal sanctions directly entrusts the prisoner with performing work that enables the performance of actions necessary for the good functioning of the institution, e.g. work in the institution's kitchen, laundry or library) or a third party (e.g. concessionaire or social enterprise). In any case, the work is performed under the permanent control of the institution's management, which ensures supervision of the prisoner, discipline and safety at the workplace, because the work serves to prepare the prisoner for employment on the open market. In this sense, the prison employment contract (fr. *contrat d`emploi pénitentiaire*) was introduced as the basis for the work of prisoners.[3] That contract is not, however, a type of employment contract, which is concluded in accordance with the Labor Code, but a *sui generis* contract, regulated by the Code of Criminal Procedure, with the latter act expressly referring to the corresponding application of the Labor Code (Auvergnon, 2022 , p. 56). The new legal regime, at the same time, implies the reconciliation of the interests of three parties: the prisoner who works, the provider of work orders, and the administration for the execution of criminal sanctions (Charbonneau, 2022, p. 26). If the provider of work order is an institution for the execution of criminal sanctions, the prisoner and the director of the institution conclude a contract on prison employment, as a contract of public law, while in the case of work for another provider of the order (so-called production work), he prisoner, the prison director and the provider of the work order conclude the agreement, as an annex to the contract concluded between the prisoner and the provider of the work order (Charbonneau, 2022, p. 30). In both cases, the director of the institution retains the authorisations related to security and order in the institution. The prisoner is, therefore, subordinate to the disciplinary pregoratives of the director, who supervises the place of execution of the work and can terminate this contract by his unilateral decision, if there are justified reasons for doing

[3] Loi n° 2021-1729 du 22 décembre 2021 pour la confiance dans l'institution judiciaire (*JORF,* n°0298 du 23 décembre 2021), art. 20-26. The term "employment" (fr. *emploi*) is related to the establishment of a legal relationship regarding work for another, i.e. for a legal situation or legal status, and it should be distinguished from the term "work" (fr. *travail*), which refers to an activity linked to the establishment of a certain legal relationship (Katz, 2007, p. 42).

so related to the behavior of the worker.[4] On the other hand, the provider of work orders has the right to initiate the termination of the contract due to reasons related to the prisoner's abilities and his work results, provided that he previously indicated to the prisoner that he does not possess the necessary knowledge, skills and abilities, that is, that he does not achieve work results. Also, the provider of work orders can initiate the termination of the agreement in the event of a reduction in the volume of production activities. Finally, the ground for the termination of the contract can be the agreement of the contracting parties or resignation by the prisoner. In this way, the responsibilities assumed by the employer in a classic employment relationship are divided between the director of the institution and the provider of work orders (Charbonneau, 2022, p. 32-33).

The work of prisoners, despite similarities (and the efforts of certain lawmakers to align them), differs from work performed within the framework of an employment relationship (*cf.* Touzel-Divina, Sweeney, 2022). The most striking differences are related to the fact that the work is carried out in the institution for the execution of criminal sanctions, that is, in a closed environment, or else outside the institution, but under the control of the administration for the execution of criminal sanctions. Also, the work of prisoners is peculiar in that it is not performed primarily for the purpose of providing means of support, but is aimed primarily at the professional reintegration and resocialization of the individual after the sentence has been served. Thus, in the jurisprudence of the Supreme Court of Great Britain, the most striking difference between the work of prisoners and the employment relationship is that prisoners do not work because they have concluded a contract regulating that work, but because they have been sentenced to prison (*Cox v. Ministry of Justice* (2016) UKSC, cited according to: Mantouvalou, 2023, p. 54): "the penal situation of the prisoner constantly determines his quality as a imprisoned worker" (Ponseille, 2022, p. 303).

Furthermore, a striking difference is made by the fact that the prisoner's work is carried out within the framework of a legal relationship of public law nature, even when a contract is concluded between the prisoner and the administration of the penitentiary institution, i.e. the user company, since it is a *sui generis* contract of public law, not an employment contract (Pohlreich, 2022, p. 141). The prisoner's work, therefore, does not have as

[4] However, the Code of Criminal Procedure does not specify that the reason for terminating the contract can only be the prisoner's behavior at work or in connection with work, but in practice any violation of discipline is qualified as such (Charbonneau, 2022, p. 30).

its main objective the placing of his working abilities at the disposal of another for compensation (Decision of the Supreme Court of Spain, dated October 30, 2000, number 639, cited according to: Navarro Villanueva, 2022, p. 162). Instead, the prisoner's work is aimed at preparing him for integration into the open labor market, upon release. In this sense, the work of prisoners represents one of the essential elements of prison treatment (Cesaris, 2022, p. 193), an integral part of the system of execution of criminal sanctions, i.e. a tool for reintegration and prevention of return, which is why deviations, i.e. derogations from classic labor law rules are necessary (Charbonneau, 2022, p. 35). This is all the more so since prisoners do not have the freedom to choose a job, nor the possibility to change a job that does not match their aspirations and experience. Also, prisoners who will be engaged in work are not chosen according to their abilities to perform a certain professional activity, but, on the contrary, the activities that will be entrusted to them are chosen according to their abilities. Finally, it should be noted that the compensation that prisoners receive for their work is paid in the amount determined by law, which means that it cannot be subject to negotiation between prisoners (or their representatives) and the entity that performs the functions of employer (Decision of the Court of Appeal in Berlin (*Kammergericht*), dated June 26, 2015, No. 2 Ws 132/15 Vollz., cited in: Pohlreich, 2022, p. 156). These and other differences between the work of prisoners and work within the framework of an employment relationship do not, however, represent an obstacle for the adapted application of certain provisions of the labor legislation to prisoners, of course, to the extent that it is possible and corresponds to the legal position and specific place of work of these persons. The Court of Justice of the European Communities reasoned similarly, although, in relation to the *work of users of the services of the drug addict rehabilitation center*, since the purpose of the work was crucial for the qualification of the worker (in the sense of the Community law notion of worker).[5] It was concluded that a user of the services of a

[5] In the jurisprudence of the European Court of Justice, a Community law concept of worker was built, and that is due to the meaning that this term has in terms of the rules on the freedom of movement of workers. According to this concept, the essential elements of the term worker are *work for another, work under the direction of another and remuneration for work*. The defined elements of the term "worker", more precisely, imply that it includes persons who work for another within the scope of employment, and whose work is paid and subordinated, which means that it is performed under the direction of another. The existence of the element of remuneration in the community term "worker" does not depend on the amount and regularity of payment of compensation for work, because the

center for the rehabilitation of drug addicts, who works in that center for compensation, cannot be considered a worker, because his work is not primarily aimed at earning money, but at recovery and reintegration into the labor market (Judgment in case C-344 /87 (*Bettray v. Staatssecretaris van Justitie*), of 31 May 1989, ECLI:EU:C:1989:226). This further means that work aimed at *preserving, establishing or developing the working abilities of persons who, due to certain personal circumstances, are unable to be employed under regular conditions* - cannot be considered an economic activity, if it is only a means for their rehabilitation. Admittedly, with regard to the work of rehabilitation center service users, we should not lose sight of the fact that the *sui generis* nature of work engagement for rehabilitation purposes is also determined by the low level of productivity of these workers, as well as the fact that compensation for their work is mainly financed by subsidies from public funds. The latter two characteristics do not, however, call into question the worker's qualification, but it is not acceptable because in this case, the work is adapted to the physical and mental abilities of each worker and should contribute to them, sooner or later, renewing their abilities, in order to could get a job in the open market and lead an independent life. This is all the more so since the persons who will be engaged in the rehabilitation workshops are not chosen according to their abilities to perform a certain professional activity, but, on the contrary, the activities that will be entrusted to them are chosen according to their abilities, which is also important for the work of prisoners. The verdict in this case caused a lively controversy also due to the question of whether the indicated interpretation of the notion worker also applies to work in companies for professional rehabilitation and employment of persons with disabilities. That dilemma, in fact, concerned the question of whether all persons with sheltered employment, or the relevant exception is reserved only for persons whose work is aimed at the reintegration of workers into the labor market. The majority of authors opt for the second answer, considering that freedom of movement is guaranteed to persons with disabilities and other persons with

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qualification of a worker crucially depends on whether a certain person actually performs some economic activity (eng. *genuine and effective work /economic activity/*) and receives compensation for his work, regardless of the amount of this consideration. The worker's qualification is not affected by the motive for working for another, although from the three-part structure of the term it could be concluded that the main goal of working for another is to obtain means of support. Finally, let us also note that the work that a worker performs for another must not be of a marginal or auxiliary nature (*cf.* Kovačević, 2021, pp. 450–453).

so-called protected employment, because their work, in addition to being therapeutic, also has a lucrative purpose (Craig, de Búrca, 1996, p. 669).

1.2. Ways of organizing prisoners' work

Depending on the person who manages the work of prisoners and the person on whose behalf that work is performed, three ways of organizing the work of prisoners can be observed in foreign legal systems. The first way implies that their work is performed for the account of the administration of the institution for the execution of criminal sanctions and that the administration directs their work. In addition, prisoners can work for a private law entity, inside or outside the premises of the institution. Although it is confirmed in the Standard Minimum Rules of the UN that the administration of the institution for the execution of criminal sanctions must have primacy in the management of industrial plants and economies of the institution in relation to economic entities, in recent decades, the organization of production/service work of prisoners has been developing in a different direction. This is, among other things, due to numerous problems that burden institutions for the execution of criminal sanctions, such as insufficient spatial, material and financial conditions for the organization and development of production/providing services, the lack of qualified workers in services for training and employment of prisoners, and the impossibility of satisfactory marketing of products /service (Schmelck, Picca, 1967, p. 292). Therefore, the possibility of private initiative in the field of execution of sentences was expressly introduced in the European Prison Rules (Ignjatović, 2010, p. 69). This is also a trend in certain countries (the United States of America, Australia, Great Britain), where privatization, public-private partnerships and subcontracting are enthusiastically affirmed. Namely, it is believed that the latter mechanisms make it possible to lower the costs related to serving the sentences of the increasingly numerous prison population, as well as the acquisition of new skills, and easier payment of compensation for damages caused to victims of criminal acts. If prisoners work for private law entities, their work can be managed in two ways. First, managerial prerogatives may belong to the penitentiary (and its training and employment service) or to a specific body, which provides training and employment to prisoners (e.g The body responsible for managing the work of prisoners in all penitentiary institutions in Spain is called *Organismo Autónomo de Trabajo Penitenciario y Formación para el Empleo,* with the exception of Catalonia, where the management is entrusted to a special center - *Center d`Initiatives per a la Reinsertio*) (Navarro Villanueva, 2022, p. 158). In addition, the work

of prisoners can be managed by a subject of private law, which organizes work in its premises or in prison premises. These ways of engaging inmates are fraught, however, with numerous controversies, including the risk of abandoning the primary goal of prison work (rehabilitation) in favor of a new goal: making and maximizing profits.[6]

Foreign legal systems know several different ways of engaging prisoners to work for the benfit on of private law entities. The first large group consists of the "referral" of prisoners to work for a private law entity. This method of work engagement, which the Convention of the International Labor Organization (ILO) No. 29 refers to as hiring, includes three systems: a) the leasing system; b) general contract system; c) special contract system. In the leasing system, the state concludes a contract with a subject of private law on the basis of which the prisoner is sent to work with that subject, which, in doing so, provides accommodation, food and security, receiving in return the prerogative to hire the prisoner for work (Committee of Experts on the Application of Conventions and Recommendations (2007), para. 57). On the other hand, in the general contract system, the state provides housing and custody of prisoners, while the subject of private law provides food and means of work to prisoners (Committee of Experts on the Application of Conventions and Recommendations (2007), para. 57). In addition, the subject of private law owes the state a certain amount of money, as consideration for the use of the prisoner's work. This system is referred to as the general contract system because all able-bodied prisoners from a certain institution for the execution of criminal sanctions are sent to work for a private law entity, in contrast to the system of a special contract, in which the administration of the institution chooses prisoners (individuals or groups of convicts) who will work for this entity. As in the general contract system, the state provides

[6] Fenwick distinguishes models of prisoner engagement depending on whose authority the prisoners are under and for whose benefit they work. However, this author identifies three distinct models of participation by private law entities in the engagement of prisoners. The first and simplest is the 'consumer' model, in which private law entities purchase products created as a result of prisoner labor. The second is the 'employer' model, which implies that a private law entity directly hires prisoners and pays compensation for their work. Finally, under the third model, which Fenwick calls the 'manpower' model, institution for execution of criminal sanctions engages prisoners to perform work for the benefit of a private law entity, which is why this model would be more aptly named the 'subcontracting model' (Fenwick, 2005, p. 262).

accommodation for prisoners, with the fact that in the special contract system, it fully retains the right to manage the prisoners' work. The subject of private law is obliged to pay compensation for the prisoners' work and to provide funds and equipment for their work, while the work is managed by persons authorized by the subject of private law and who, for this purpose, are "assigned" to the institution for the execution of criminal sanction (Committee of Experts on the Application of Conventions and Recommendations (2007), para. 57). Despite the differences related to the provision of housing, food and means of work by the state and the subject of private law, all three systems have one common feature: the total results of the prisoners' work belong to the subject of private law (Committee of Experts on the Application of Conventions and Recommendations (2007)), para. 57). Finally, the employment of prisoners can take the form of placing the prisoner's working abilities at the disposal of a subject of private law (ILO Convention No. 29 uses the term 'placing at disposal'), so that it does not owe the state financial resources, but, on the contrary, receives subsidies from the state for managing the work of prisoners (Committee of Experts on the Application of Conventions and Recommendations (2007), para. 57).

2. Voluntariness of the prisoner's work[7]

2.1. Prisoner's work and prohibition of forced labor

In international law, the work required of prisoners is not considered forced labor. That exception was made because of the benefits that society can have from the work of these persons, primarily due to its rehabilitative function, as well as because of lowering the costs of serving a prison sentence (Committee of Experts on the Application of Conventions and Recommendations (2007), para. 49). The prison administration can, namely, require the prisoner to perform work, which must correspond to the abilities of each convict,[8] so that failure to comply with the order and work instructions may result in the imposition of a disciplinary penalty.

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[7] This section also contains the results of our earlier research, which were published in Kovačević (2013).

[8] Thus: Standard Minimum Rules for the Treatment of Prisoners, point 71, paragraph 2 ("all prisoners under sentence shall be required to work, subject to their physical and mental fitness as determined by the medical officer"); Recommendation Rec (2006)2, rule 105.2 ("sentenced prisoners who have not reached the normal retirement age may be required to work, subject to their physical and mental fitness as determined by the medical practitioner").

In this regard, it should be borne in mind that in modern law, the generally accepted definition of forced labor is the definition contained in the ILO Convention No. 29, according to which forced labor is all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily[9]. In this sense, the *absence of voluntary consent to work* and the *threat of punishment* are considered essential elements of forced labor. International instruments for the protection of human rights and fundamental freedoms, however, allow several exceptions to the prohibition of forced labor, which have in common that they are *not of a permanent nature* and require deviations from the prohibition of forced labor in the name of *general interest and social solidarity*. All applicable sources of law of international origin, however, exclude the work of prisoners from the concept of forced labor, while other exceptions differ from one instrument to another. The provisions of the applicable sources of law of international origin are not, however, harmonized with regard to the conditions under which prisoners may be required to perform forced labor. Thus, the International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms set only two conditions for permissible compulsory labor of prisoners: that a certain person has been deprived of his liberty or is on parole based on a court decision, and that the nature of his work is such that it can be considered work that is normal, i.e. usual as part of deprivation of liberty. The fulfillment of the conditions concerning the grounds for deprivation of liberty is also determined by the ILO Convention No. 29, although, without mentioning parole, but it does not dwell on that, but sets two more conditions for the performance of forced labor by prisoners: that it is carried out *'under the supervision and control of public authorities'* and that *'the said person is not hired to or placed at the disposal of private individuals, companies or association'*. The work required of prisoners under these conditions is not considered forced labor, which means that the state perties

[9] The International Labour Organization Convention No. 29 on Forced or Compulsory Labour (*Official Gazette of the Kingdom of Yugoslavia*, No. 297/1932), Article 2, Paragraph 1. The International Covenant on Civil and Political Rights and the European Convention for the Protection of Human Rights and Fundamental Freedoms do not contain a definition of the notion 'forced labour.' However, the boundaries (of the core) of this notion are clarified by their provisions establishing exceptions to the general prohibition of forced labour, as well as by the jurisprudence of the bodies responsible for supervising their implementation, where there is consensus that forced labour should be understood as work as defined in ILO Convention No. 29 (*cf*. Kovačević, 2023b, p. 50).

to the ILO Convention No. 29 are not obliged to ensure the voluntary work of persons convicted on the basis of a court verdict, if they work under the supervision of public authorities and if they were not hired by a private law entity. The exception in question does not apply, however, to cases of voluntary work by prisoners, which is allowed even when the conditions related to work supervision and the circle of beneficiaries of the results of the work of prisoners are not met. In this sense, there is room for the conclusion that universal international labor standards do not prohibit the voluntary work of prisoners for the benefit of private law subjects, but neither do the mandatory work of prisoners for the benefit of the state.

Foreign legislation inherits different solutions regarding the admissibility of forced labor for prisoners. Until the beginning of the XXI century, the obligation of prisoners to work was abolished only in France, Spain and Great Britain, while in other European countries there was a legal obligation for them to work. In this millennium, in accordance with the idea that the rehabilitative function of prisoner's work cannot be fully and effectively realized if there is an obligation for them to work, in many countries, including the Republic of Serbia, the obligation to work has been abolished, except for work that is necessary for functioning of the penitentiary institution (maintenance of hygiene of clothes and dormitories, cooking, etc.). However, there are also countries where the obligation to work still exists today, such as is the case, for example, in Germany, where it has been retained by the legislation of quite a few provinces: Baden-Württemberg, Bavaria, Berlin, Bremen, Hamburg, Hesse, Mecklenburg – Western Pomerania, Lower Saxony, Saxony-Anhalt, North Rhine-Westphalia, Schleswig-Holstein, and Thuringia (Pohlreich, 2022, p. 142). Prisoners are obliged to work within the limits of their physical and health abilities, while refusal of the offered job is threatened with disciplinary sanctions, except when the reason for refusal is related to attending an education or training program, since that program is equated with compulsory work (Pohlreich, 2022, p. 142). On the other hand, the obligation to work does not exist for prisoners with disabilities, prisoners who are sick (while the illness lasts), as well as for prisoners over 65 years old, and pregnant and nursing women, to the extent that these categories are prohibited from working in the general regime of employment relationship (Pohlreich, 2022, p. 142-143). The working conditions in the penitentiary institution must be similar to the working conditions of the employees, especially in terms of occupational health and safety. However, the provisions of the labor legislation are not applied to them, but the provisions of the legislation on the execution of criminal sanctions, even when the work is performed for an external "employer",

who has the authority for technical control of that work, but does not establish any legal relationship with the prisoner. In this sense, compensation for work is paid to prisoners only by the institution for the execution of criminal sanctions to wich the beneficiary company owes certain financial benefits), which is why the legal rules on minimum wage do not apply to these prestations. On the other hand, it should be borne in mind that penitentiary institutions cannot provide suitable jobs for a large number of prisoners, which is why many convicts who are obliged to work by provincial legislation do not actually have a job (Pohlreich, 2022, p. 144-145). In this sense, in practice, the obligation to work, step by step, is transformed into the possibility of work, especially since penitentiary institutions usually assign jobs only to prisoners who want to work. Finally, it should be noted that, in addition to mandatory work, which is generally performed inside the institution, prisoners in Germany can work in two other ways: on the basis of a contract with an external employer, as well as in the form of independent work, e.g. in terms of artists and scientists. The first type of work, however, can only be allowed if it serves to develop, preserve or improve the employability of prisoners, and is performed by a negligible number of prisoners. Also, the number of prisoners who are allowed to work independently inside or outside the institution is extremely modest (Pohlreich, 2022, p. 141).

It can be concluded that even in countries where there is still an obligation to perform production/service work, prisoners have the opportunity to choose „the type of employment in which they wish to participate, within the limits of what is available, proper vocational selection and the requirements of good order and discipline". In countries where the obligation to work has been abolished, the freedom to choose a job includes the right to refuse the offered job, with the fact that this can produce certain negative consequences for the prisoner's status, such as limiting the visits of family members and friends, reduced opportunities for playing sports and watching television, but also the risk that the convict will not be offered any new job in the future (Auvergnon , 2007, p. 79). This, more precisely, means that the prisoner has the right to access work, for which, first of all, he needs to express his will to work. After that, it is assessed whether he is fit for work, and then his tendencies are determined and the job where they can be manifested is assessed (Charlot, Weissenbacher, 2014, p. 323). The management of the institution for the execution of criminal sanctions takes into account not only the physical and intellectual abilities of the prisoner, but also his family obligations, of course, to the extent that this is possible (Charlot, Weissenbacher, 2014, p. 323).

Finally, it should be borne in mind that the requirement to ensure the decent work of prisoners does not presuppose the comprehensive

equalization of the work of convicts with the work of employees, because even in countries where the mandatory work of prisoners has been abolished, their work can never be described as completely free or voluntary. Instead, it is more appropriate to talk about the '*limited consent'* of prisoners to work, because they are free to choose the type of activity they will engage in (International Labour Conference, 2005, p. 28). However, the most delicate problem that threatens the effective exercise of freedom of choice of work concerns *the impact of commitment to work on mitigating the sentence*, since not accepting the offered job may result in the loss of the possibility of mitigating the sentence. Namely, one important element of forced labor can be recognized in that consequence, since the punishment under which forced labor is carried out can consist in the *loss of any right or benefit*. The Committee of Experts for the Implementation of ILO Conventions and Recommendations warns of this, which is why, in the last couple of decades, many countries that have ratified ILO Convention No. 29 have amended laws on the execution of criminal sanctions, in order to explicitly confirm the necessity of *formal (written) consent of prisoners to work on behalf of a private enterprise* (e.g. in Brazil, Colombia, Côte d'Ivoire and Suriname) or confirmed (and improved) guarantees regarding labor compensation (e.g. in Argentina and El Salvador) and other working conditions, as well as protection from social risks (e.g. in Chile and France).[10]

2.2. Grounds for deprivation of liberty

In international law, the first requirement for the exclusion of prisoners from the scope of the prohibition of forced labor refers to the *lawful deprivation of liberty based on a court decision*. This condition is fulfilled only if a certain person is deprived of liberty based on the decision of a court whose nature, composition and rules of procedure correspond to the internationally recognized standard of fair trial (presumption of innocence, equality before the law, independence and impartiality of the court, right to defense, etc.) (Fenwick, 2005, p. 269). Therefore, forced labor cannot be required from persons deprived of their liberty based on the order of the executive authority, persons who have been ordered to be deprived of their liberty by the courts who do not meet the requirements confirmed by the standards on the right to

[10] Commmittee of Experts on the Application of Conventions and Recommendations (2007), paras. 60–61, 114–115. European Prison Rules stipulate that prisoners who are employed should be covered by the national social security system to the greatest extent possible (Rule 26.17).

a fair trial, as well as unconvicted prisoners. Also, in terms of the provisions of the International Covenant on Civil and Political Rights and the European Convention on Human Rights, persons who, based on a court decision, have been conditionally released, are exempted from the prohibition of forced labor, because they may be required to perform certain work.
When it comes to unconvicted persons, the possibility of *voluntary employment of detainees* should be taken into account. The absence of the obligation to work on the part of persons who have been arrested or kept in police custody is confirmed by the Standard Minimum Rules of the UN on the Treatment of Prisoners and the European Prison Rules. The latter source of law, however, also has one, conditionally speaking, exception, which does not concern productive work, because, in accordance with rule 19.5, detainees may be required to work, if this is necessary for the maintenance of their personal hygiene and clothing hygiene and dormitories (Commentary to Recommendation Rec/2006/2 of the Committee of Ministers to member states on the European Prison Rules, p. 38). These persons may demand to work or may be offered work, which is why, for example, in certain Swiss cantons, detainees may choose to be housed in a prison for convicted persons, in order to enable them to work (International Labour Conference, 2005, p. 27).

2.3. Nature of prisoner's work

International instruments for the protection of human rights exclude from the prohibition of forced labor work "which is normally required of a person deprived of liberty based on a court decision", i.e. work which is "usual as part of deprivation of liberty". Hence, when assessing the permissibility of prisoners' work, the nature and purpose of their work must be taken into account. Namely, prisoners can only be required to carry out work aimed at preserving and improving work abilities, that is, aimed at increasing the individual's ability to find and maintain employment after release. In this sense, work that does not contain elements of rehabilitation is not compatible with the guarantee of the prohibition of forced labor.
This rule is confirmed, among other things, in the jurisprudence of the European Commission for Human Rights and the European Court of Human Rights. Thus, in the case Van Drogenbroeck v. Belgium, the Court considered the position of a person who was repeatedly convicted of theft and who, with the aim of resocialization and reintegration, worked in a company for the installation of central heating. The convict was obliged to perform that work, and his release was conditioned by the requirement

that he save a certain amount of money from the compensation he receives based on the work. As the prisoner had failed to save the money which should have made life easier for him after his release, and there was no prospect of his employment on the open market, the Committee for Returnees recommended that he continue to work in prison until he had saved 12,000 Belgian francs. The prisoner, however, believed that, due to the "vagaries of the (prison) administration", he was in a slave position, and that his prison sentence was "turned into forced labor", because he was forced to work in order to save the specified amount of money. The court concluded that in the case in question there is no place for the qualification of slavery, while regarding the alleged existence of forced labor, it found that "this factual question can remain open", because "in practice, the one whose release is conditioned by the possession of savings from compensation for the work performed in prison [...] is not far from obligation in the strict sense of the word. However [...] failure to comply with Article 5, paragraph 4 (European Convention for the Protection of Human Rights and Fundamental Freedoms - Lj. K.) does not automatically mean the existence of a violation of Article 4: the latter article, in paragraph 3 (a), allows work that is customary as part of the deprivation of liberty, which was the case here, in a way that does not violate Article 5, paragraph 1. Moreover, the work required of Van Drogenbreck did not go beyond what is 'usual' in this context, as it should have help his integration into society, and because it had as its legal basis the provisions that are valid in some other countries of the Council of Europe" (Judgment in the case of Van Drogenbroeck against Belgium, dated June 24, 1982 (application number 7906/77-ECLI:CE:ECHR:1982: 0624JUD000790677, paras. 58-59).

On the other hand, in the case of De Wilde, Ooms and Versyp v. Belgium, the nature of the work of three persons who, based on a court decision, were placed in a reception center because they did not have a roof over their heads was discussed, (sufficient) means of support, and regular occupation. Their detention in the reception center was similar to deprivation of liberty (Popović, 2012, p. 212), while, despite the peculiarity of the position of each of them, they had a common obligation to perform certain tasks, with the possibility of being disciplined if, without justified reason, refused to work. Unlike the European Commission for Human Rights, which qualified this case as a violation of the prohibition of forced labor, the European Court of Human Rights concluded that there is no place for such a qualification, because the duty of these persons "did not exceed the 'usual' limits [...]], because it was aimed at their rehabilitation" (Judgment in the case of De Wilde, Oms and Versyp) v. Belgium, dated June 18, 1971 (application no.

2832/66, 2835/66, 2899/66), ECLI:CE:ECHR:1971:0618JUD000283266, paras. 88-90).

2.4. Supervision of prisoners' work

ILO Convention No. 29 allows for the exemption of prisoner labor from the general prohibition of forced labor only if the labor is performed under the *supervision and control of public authorities*. The introduction of this requirement was motivated by the need to ensure effective protection of prisoners from exploitation, as well as their safety, so that the use of compulsory labor of prisoners is allowed only if the state has a *real* possibility to guarantee decent working conditions by supervising their work. The assessment of the fulfillment of the relevant requirement is fraught with certain practical problems, especially if subjects of private law are also involved in the organization of the prisoners' work (inside or outside the premises of the institution for the execution of criminal sanctions).
Although the fulfillment of the conditions for the effective exercise of the state's protective function will be a factual question for each individual case, it seems that when finding an answer, one must keep in mind the basic reason for determining the requirement related to supervisory powers, which is the *need to eliminate the risk of exploitation of prisoner's labor*. This condition is considered fulfilled if the private enterprise is entrusted only with the authority to issue professional or technical work instructions (Höland, Maul-Sartori, 2007, p. 143). On the contrary, the requirement in question cannot be considered fulfilled, if the supervisory powers of public authorities are limited only to the periodic inspection of the premises where prisoners work (Committee of Experts on the Application of Conventions and Recommendations, 2007, para. 53). This ultimately means that the prisoner works under the supervision of the public authorities only if they can *exercise effective, systematic and regular control*. In this sense, the ILO Convention No. 29 excludes not only complete, but also predominant delegation of supervisory powers to the subject of private law, which ultimately means that *public authorities must have an essential part of supervisory powers* (Fenwick, 2005, p. 273). The UN's Standard Minimum Rules on the Treatment of Prisoners are on the same wavelenght, stipulating that "where prisoners are employed in work not controlled by the administration, they shall always be under the supervision of the institution's personnel".[11]

[11] UN Standard Minimum Rules on the Treatment of Prisoners, point 73.

2.5. Circle of beneficiaries of prisoners' work results

The permissibility of prisoner's work may also depend on whether they work only for the prison authorities or make their work capacities available to subjects of private law. The European Convention for the Protection of Human Rights and Fundamental Freedoms does not respect that criterion, so the exclusion of compulsory labor of prisoners from the prohibition of forced labor is not conditioned by the requirement that the work is not performed for subjects of private law. This has been confirmed in the jurisprudence of the European Committee for Human Rights and the European Court of Human Rights, which consider that the work that a prisoner performs for a private company, based on the contract concluded between the institution and the prisoner, is work that is normally required of the prisoner[12]. On the contrary, the provisions of the ILO Convention No. 29 condition the exclusion of prisoners from the prohibition of forced labor with the requirement that the subject of private law has not engaged the prisoner for work. Fulfillment of that requirement is requested regardless of the place of work, i.e. regardless of whether the prisoner works in a workshop inside the prison premises, managed by a private company, or outside the prison premises, or in a prison managed by privately run prisons. Also, the requirement in question applies regardless of the type of work, which means that cases in which private companies hire prisoners to perform public works are also considered forced labor (Committee of Experts on the Application of Conventions and Recommendations, 2007, paras. 9, 106).

The fulfillment of this requirement is accompanied by numerous doubts, especially if the subject of private law is not only the end user of the work results, but also has the authority to manage the work of prisoners. In this connection, the question of whether the request for non-existence of

[12] "Article 4, paragraph (3) (a) (Art. 4-3-a) [of European Convention for the Protection of Human Rights and Fundamental Freedoms - Lj. K.], which deals with the question of prison labour, contains nothing to prevent the state from concluding such contracts [contracts with private companies – Lj. K.] or to indicate that a prisoner's obligation to work must be limited to work to be performed within the prison and for the state itself". (Decision of the European Commission for Human Rights in the case Twenty-one detained persons v. Germany, dated April 6, 1968 (application no. 3134/67, 3172/67 and 3188-3206/67), ECLI:CE:ECHR :1968:0406DEC000313467).

employment by the subject of private law is fulfilled only if the prisoner has not concluded an employment contract with the subject of private law appears as a sensitive issue. A negative answer seems acceptable, since the legal basis of the work (and the nature of the relationship established between the prisoner and the subject of private law) is not a decisive factor for the qualification of an impermissible exception to forced labor, but it is sufficient for a private enterprise to use the work of a prisoner. This also applies to cases in which a legal relationship is not directly established between a private company and a prisoner, but the company establishes a legal relationship only with the prison administration, which, like some temporary employment agency, directs the prisoners to work for a private company.

In this regard, it should be borne in mind that in the practice of the Committee of Experts for the Implementation of ILO Conventions and Recommendations, the work of prisoners for subjects of private law is considered to be in line with the requirements of ILO Convention No. 29, only if there is written consent of the prisoner and if the working conditions are similar working conditions of employees in the employment relationship, in terms of salary, occupational health and safety, and social security. The fulfillment of these prerequisites is considered as confirmation of the voluntary work of prisoners (Mantouvalou, 2023, p. 136). The European Committee for Social Rights also reasons in a similar way, when it indicates the need that the working conditions of prisoners should be strictly regulated and as similar as possible to working conditions outside prison, and that work for a subject of private law must be based on the consent of the prisoner (Mantouvalou, 2023, p. 136).

The limitation of the circle of beneficiaries of the results of prisoner's work should contribute not only to preventing the exploitation of their work, but also to preventing *unfair competition* on the (national and international) market. This is because the lower labor costs, which the beneficiaries of the results of the prisoner's work have, enable them to achieve a competitive advantage in the market compared to employers who hire other categories of workers (Ravnić, 2004, p. 93-94). Such a risk exists despite the rule that prisoners must be provided with conditions that are as similar as possible to the working conditions of other workers, which is especially true for the right to compensation for work. This, finally, means that subjects of private law should not make a profit from the work of prisoners, unless that work is performed in conditions similar

to the working conditions of employees, and if no recourse is made to artificially lower the compensation for the work of convicts.[13]

3. Working conditions and the need for their "normalization"

Prisoners belong to a particularly sensitive category of workers. Their vulnerability stems from the fact that they do not enjoy freedom of movement, which is why, further, they do not have access to jobs available on the open market, nor the possibility to change jobs they are not satisfied with (Mantouvalou, 2023, p. 51). This is compounded by the fact that prisoners are often excluded from the personal scope of labor and social legislation, which opens the door for the exploitation of their work and other abuses (Mantouvalou, 2023, p. 49). In this regard, the fact that the risk of labor exploitation often extends to the period after an individual's release from prison is of particular concern, primarily due to the prejudices and stereotypes that employers have towards ex-prisoners, which cause them to encounter serious obstacles in their search for work, as well as in terms of maintaining employment (cf. Combessie, 2004; Kovačević, 2023a). Finally, we should not lose sight of the conviction of a considerable number of employers that ex-prisoners are ready to perform low-paid and precarious jobs even after their release (Mantouvalou, 2023, p. 55). In this sense, contemporary science rightly affirms the abandonment of the concept according to which, due to the criminal offense committed by the prisoner, a certain level of suffering is inherent in life in prison, which manifests itself in less favorable living conditions compared to the conditions in which free people live, and as a result the catalog of prisoner's rights is more modest (Avvenire, 2022 p. 99). In that position, the belief that imprisonment can be a deterrent and just sanction is abandoned only if prisoners live and work in conditions that are less favorable than the conditions in which the poorest free citizens live and work (engl. concept of `*less eligibility*', fr. *concept de moindre éligibilité*) (Amauger-Lattes, Schmitz, 2022, p. 10). Instead of this concept, in the part that concerns the work of prisoners, the concept of the *normalization of work in prisons is affirmed*, which implies, precisely, bringing the conditions of work in prison closer to the conditions of

[13] Nevertheless, one should not lose sight of the fact that in some cases the costs incurred by private law subjects for training and ensuring the safety and health of prisoners can be higher than the labor costs of other workers, while some private "employers" fear a negative reaction from consumers to the use of prisoner's labor (International Labor Conference, 2005, p. 29).

employees in the general regime of labor relations (Amauger-Lattes, Schmitz, 2022, p. 9).

The normalization of prisoner's work, first of all, implies determining the maximum fund of their *working hours*, regulating the conditions under which their overtime work can be exceptionally allowed, as well as rules on breaks during work and weekly and annual rest (Charbonneau, 2022, p. 32).[14] *Health protection and the safety of prisoners at work* are closely related to this, whereby the legislation on the execution of criminal sanctions in some countries refers to the consistent application of labor law rules on safety and health at work and on the work of prisoners. Although this is so, this instructional norm is not, however, followed by an effective institutional framework, since the labor inspectorate, which in the general regime of employment relationship supervises the implementation of regulations in this area, can only apply preventive (advisory) measures in relation to the work of prisoners, not corrective and repressive measures (Gardes, 2022, p. 131). Also, the occupational medicine service does not participate in ensuring the protection of prisoners, there is no risk assessment process, etc. Since health does not mean only the absence of diseases and injuries, but the state of complete well-being of the individual, the normalization of work also implies the *protection of prisoners from harassment at work*. Prisoners must also enjoy the *right to equality*, that is, they must be protected against unjustified different treatment on the basis of innate and acquired personal characteristics, which represent the basis of discrimination. This can be very challenging, especially if one takes into account the need to adapt the place and organization of work to the needs of people with disabilities, as well as deciding on the distribution of a regularly limited number of jobs to prisoners based on stereotypes and prejudices related to the work of certain categories of persons (Ardré, 2022 , p. 412–413). Also, it is necessary *mutatis mutandis* to apply the concept of a valid reason for dismissal, in order to ensure that the employment of a prisoner cannot be terminated against his will, unless there are valid reasons for this related to his behavior and abilities, or to the needs of the beneficiaries of the prisoner's work.

[14] In the practice of ILO supervisory bodies, the duty of prisoners to perform *overtime work*, as well as their disciplinary punishment in case of refusal of such a request, are not considered forced labor, if it is required within the prescribed framework. At the same time, it is warned that the requirement to perform overtime work could be distorted into forced labor, if there was a threat that the prisoner's employment would be terminated if he did not work longer than full-time (Moreau, 2018, p. 1065).

In legally binding sources of international law, the qualification of work that is common as part of deprivation of liberty does not depend on the payment of fair compensation for work, nor on the protection of prisoners from illness, injury and other social risks (Judgment of the European Court of Human Rights in the case of Stummer v. Austria, dated July 7, 2011 (application no. 37452/02), ECLI:CE:ECHR:2011:0707JUD003745202, para. 132). On the other hand, the Committee of Experts for the Implementation of ILO Conventions and Recommendations, as well as non-legally binding sources on the position of prisoners, establish the rule that the organization and working conditions of prisoners should be as similar as possible to the working conditions in freedom, especially in terms of occupational health and safety, working hours and remuneration for work.[15] Therefore, making a profit from the voluntary labor of prisoners is considered fair only if the prisoners work under conditions that are most similar to the conditions of work in the open market, and on the condition that no artificial lowering of remuneration for their work is resorted to. This is all the more so since the failure to obtain fair compensation for the work of prisoners can also affect the level of wages of employees at employers, and because of the effort to lower the wages of employees to lower labor costs and make products cheaper than goods produced in penitentiary institutions (Mantouvalou, 2023, p. 53).

Historically, the recognition of prisoners' right to *compensation for work* has been associated with numerous controversies, the most significant of which is related to the premise that paid work testifies that the work of prisoners "is not a real part of the sentence" and that compensation for work "rewards the skill of the worker, not re-education of the guilty". This idea is opposed by the position that the right to compensation for work

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[15] Standard Minimum Rules for the Treatment of Prisoners, point 11, point 72, paragraph 1, and points 74-76; Resolution (75) 25 on prison labor, paragraph 1, point 4; Recommendation Rec(2006)2, rules 26.7, 26.10, 26.13 (unlike other working conditions that should be as similar as possible to work on the market, „health and safety precautions for prisoners shall protect them adequately and shall not be less rigorous than those that apply to workers outside“), 26.14 - 26.16. and 105.3. The Committee of Experts for the Application of ILO Conventions and Recommendations has determined the requirements that the work must meet in order to be qualified as voluntary work by prisoners, starting with the requirement that the conditions in which they work are, in principle, equivalent to the conditions provided to employees in similar jobs (Fenwick, 2008, p. 599).

must be viewed in the light of the basic goals of the prisoner's work. As work "causes positive changes in a person", so production is not paid with monetary compensation, but it "functions as a initiator and indicator of individual transformations of prisoners: it is a legal fiction, since it does not represent a 'free' sale of labor power, but a trick that considers educational and correctional techniques" (Foucault, 1997, p. 233). The benefit of work compensation is reflected in the fact that "as a condition of survival, it imposes on the prisoner a 'moral' way of earning a living and enables him to get into the habit of working and loving work," because if, after serving his sentence, the prisoner does not live from his work, he must live at the expense of others, primarily through the redistribution of social wealth based on the fiscal system (Foucault, 1997, p. 233).

Compensation for a prisoner's work is, first of all, peculiar in that he cannot dispose of it freely (Schmitz, 2022, p. 91). Furthermore, the amount of this compensation is not calculated on the basis of labor law rules on wages, it is regularly significantly lower than the wages of employees, and does not reflect the real value of the work of prisoners. Nevertheless, the literature warns of the need that its height should not be set below a level that could make prisoners understand their work as anything more than a punishment. It is necessary, namely, that the amount of compensation shows the prisoner that his work is appreciated and that it enables him to resocialize. This means, more precisely, that the realization of compensation in the amount that ensures the prisoner's autonomy and dignity does not contradict the goal related to the reintegration of the prisoner after serving the sentence (Auvergnon, 2022, p. 67). On the contrary, a prisoner cannot be expected to respect society and reintegrate after serving his sentence, if he is expected to work in conditions in which his dignity is violated or his basic labor rights are denied.

One of the peculiarities of compensation for the work of prisoners is that it is not subject to negotiation between the prisoner (or the prisoner's representatives) and the administration of the institution for the execution of criminal sanctions (or the user company), but its amount is determined by law. This prevents different treatment of prisoners in one institution, as well as from one institution to another, while fairness of compensation is achieved by taking into account the complexity of the work performed when determining the range of compensation for work, as is the case in Germany, for example. However, even in this case, the differences between the fees for certain jobs must not be too deep, because otherwise the good functioning of the institution could be threatened (Pohlreich, 2022, p. 147-151). The German system is also specific in that in the provinces where the legislation on the execution of criminal sanctions recognizes the obligation

of prisoners to work, compensation for work is not only paid in money, but also through the provision of certain benefits, such as days off, additional days off, assistance for repayment debts that the prisoner has, or shortening the period of serving the prison sentence (Pohlreich, 2022, p. 151). According to the European Court of Human Rights, the latter possibility is acceptable, since compensation for the work of prisoners can take different forms (Judgment of the European Court of Human Rights in the case of Floriu v. Romania, dated March 12, 2013 (application number 15303 /10), ECLI: CE:ECHR:2013:0 312DEC001530310). Compensation for work can be both monetary and non-monetary, but "*lato sensu* must always exist" (Avvenire, 2022, p. 114). However, when it comes to the amount of remuneration for the work of prisoners, the Court underlines the importance of the requirement that the remuneration be decent. Namely, it is requested that the amount of the compensation should not be such that its payment could be considered a degrading treatment, while the Court's decisions do not emphasize the requirement that the compensation should also be fair (Avvenire, 2022, p. 116-117). The latter point of view is not, however, in accordance with the concept of decent work, which was developed under the auspices of the ILO, and which implies, among other things, that the remuneration for work should correspond to the value to which the individual contributed. Although, therefore, the purpose of work in prison is "atypical" and its nature is unprofitable, it is lucrative for the beneficiaries of the work of prisoners (whether it is an institution for the execution of criminal sanctions or a concessionaire), because they make profit from this work (Gardes, 2022, p. 126-127). Therefore, compensation for prisoners' work should also be fair.

Finally, it should be borne in mind that in some countries, including 12 member states of the Council of Europe, prisoners do not *have the right to pension insurance*, while in other countries, access to this branch of social insurance depends on the type of work they perform, especially on its remuneration and on the circle of beneficiaries of their work (Mantouvalou, 2023, p. 52). In this regard, it should be borne in mind that the European Court of Human Rights concluded that a prisoner who, despite many years of work in the prison kitchen and bakery, did not complete the minimum insurance period, and consequently could not exercise the right to an old-age pension - was not harmed the right to unhindered enjoyment of property, the right to protection against discrimination and the right to protection from forced labor (Judgment of the European Court of Human Rights in the case of Stummer v. Austria, dated July 7, 2011 (application no. 37452/02, ECLI:CE: ECHR:2011:0707JUD003745202), however, several judges pointed out the fact that the prisoner was not able to complete the minimum period of

insurance and enjoy the rights from the social security system that the state retained 75% of the compensation for his work. In this sense, it was pointed out that the Convention is a living instrument and that its provisions must be interpreted in modern spirit. And the same cannot be said for the Court's assessment that the work of a prisoner which is not followed by mandatory pension insurance is work that is normally required of a person deprived of his liberty: „Nowadays, work without adequate social cover can no longer be regarded as normal work […] Even a prisoner cannot be forced to do work that is abnormal" (Partly Dissenting Opinion of Judge Tulkens, paragraph 8).

4. Collective rights of prisoners

In addition to the denial of individual labor rights, in most countries, prisoners are also denied collective rights and freedoms, starting with trade union freedoms, with an explanation related to the need to protect security and prevent disorder in penitentiary institutions (Ranc, 2022, p. 364). In this way, prisoners remain deprived of any opportunity to collectively represent, promote and protect their interests related to prison work, despite the fact that security in institutions can be ensured by other measures, including disciplinary punishment of prisoners whose behavior threatens the good functioning of the institution. This, further, means that due to objectives that can be achieved by other measures, the enjoyment of the collective rights of prisoners is absolutely prohibited. Thus, for example, the Supreme Court of the USA determined that the decision of the administration of a penitentiary institution to prohibit prisoners who founded a union from holding union meetings and encouraging other prisoners to join this association - does not constitute a violation of freedom of speech and freedom of association (*Jones v. North Carolina Prisoners' Labor Union*, 433 U.S. 119 (1977), cited in Mantouvalou, p. 57). The Court explained this decision by the fact that the association of prisoners in order to represent and promote their interests related to work can threaten order and security in the prison, which is why the prison administration must enjoy the discretionary power to take all measures necessary to ensure order and security (Mantouvalou, 2023, p. 57). This is all the more so since, according to the Court, a suitable alternative to association was available to the prisoners. The Court's decision was not, however, made unanimously, and separate opinions pointed out that prisoners should no longer be seen as "slaves of the state", and that it is not acceptable to discredit their rights and freedoms out of fear of the prisoner’s union (Dissenting opinion of Mr Justice Marshall (joined by Mr Justice Brennan), cited in: Mantouvalou, 2023, p. 57). This is all the more so since

it concerns the category of workers, who, due to restrictions on freedom of movement, cannot change jobs, nor do they have the power to improve working conditions through negotiation (Mantouvalou, 2023, p. 57 & 58). On the other hand, it should be borne in mind that the USA belongs to a small number of countries in which there are prison associations. Namely, in the 1970s, prison associations were founded in California (*Prisoner's Union*) and North Carolina (*North Carolina Prisoner's Labor Union*), which are still functioning, although they have faced numerous difficulties since their establishment (Isidro, 2022, p. 387). In Argentina, too, in 2012, a prisoner's union (*Sindicato Unico de Trabajadores Privados de la Libertad Ambulatoria*) was founded, which today has 3,000 members and is a member of the important confederation of employee unions - *Central de Trabajodores de la Argentina* (Isidro, 2022, p. 387-388). Since it is recognized by the federal prison service, this union has the authority to negotiate with the administrations of the institutions for the execution of criminal sanctions, as well as with the companies that hire the prisoners - on the working conditions of the prisoners.

However, when it comes to European countries, the exception is Germany, where the German Prisoner's Union (*Deutsche Gefangenengewerkschaft /DGG/*) was founded in 1968, since the existing unions were not interested in the working conditions of prisoners (Pohlreich, 2022, p. 155). Also, there have been attempts to establish regional unions of prisoners, but they have regularly lasted only for a short time, while the most recent initiative for unionization came from convicts working in Tegel prison in Berlin. In 2014, they founded an union (*Gefangenen-Gewerkschaft/Bundesweite Organization /GG-BO/*), which advocates for the effective enjoyment of union freedoms, the application of rules on the minimum wage of employees to prisoners, and the inclusion of prisoners in the social security system (Pohlreich, 2022, p. 155). In this regard, it should be borne in mind that the German courts have taken opposite positions on this issue, while the Federal Constitutional Court has not yet ruled on it, although the initiative was submitted back in 2015 (Pohlreich, 2022, p. 155). The decision of the Higher Regional Court in Hamm confirmed that the Constitutional guarantees of freedom of association and union freedom apply, among other things, to prisoners (Decision of the Higher Regional Court (*Oberlandesgericht*) in Hamm, dated June 2, 2015, number OOO- 1 Vollz (Ws) 180/15, cited according to: Pohlreich (2022), p. 155 & 156), while the Court of Appeal in Berlin, on the contrary, rejected the possibility of enjoying freedom of association by prisoners (Decision of the Court of Appeal in Berlin (*Kammergericht*), dated June 26, 2015, number 2 Ws 132/15 Vollz., cited by: Pohlreich, 2022, p. 156) . The latter decision is explained by the fact that

prisoners are not hired on the basis of an employment contract, they have an obligation to work, they receive compensation, the amount of which is determined by law, and they do not have the freedom to choose a job (Pohlreich, 2022, p. 156). In this sense, it was concluded that denying the possibility of unionization of prisoners does not violate the freedom of association, since the subject limitation of this freedom is proportional to the legitimate goal of ensuring the good functioning of the system of penitentiary penitentiarz institutions. This court decision is criticized in the literature, first of all, in the light of the European Prison Rules, which confirm that work in prison, under no circumstances, may be imposed as a punishment (Pohlreich, 2022, p. 156). Also, it is pointed out the rule that freedom of association can be limited only in exceptional situations, in which it is necessary and expressly prescribed by law, which is not the case in Germany (Pohlreich, 2022, p. 156). The European Convention for the Protection of Human Rights and Fundamental Freedoms allows the restriction of freedom of association for the protection of public security, the prevention of disorder or crime, and the protection of health, but does not mention prisoners as a category of persons who may be restricted from freedom of association (this was done only with regard to members of the military, police and state administration).[16] The need to prevent disorder or crime can be considered a legitimate reason for restricting the freedom of association of prisoners, but we should not lose sight of the fact that the European Convention is a living instrument, and that prisoners, after serving their sentence, remain the holders of all rights, except the right to freedom of movement. In this sense, in a decision of the European Court of Human Rights, it was confirmed that there is still no consensus on this issue in Europe, which is why the discretionary decision-making (margin of appreciation) is left to the states (Judgment of the European Court of Human Rights in the case Yakut Republican Trade-Union Federation against Russia, dated March 7, 2022 (application no. 29582/09), ECLI:CE:ECHR:2021:1207JUD002958209). In the separate opinions of the two judges, however, it was indicated that the majority decision of the Court was based on political rather than legal reasons, and that the complete prohibition of freedom of association of prisoners is not in accordance with the Convention, because a general reference to the need to prevent disorder is not a sufficient reason for denying the enjoyment of freedom of association to such a sensitive category of workers: "we are not blind to the realities of prison life. Allowing prisoners to join a trade union (or any association, for that

[16] European Convention for the Protection of Human Rights and Fundamental Freedoms, Article 11, Paragraph 2.

matter) and to develop trade-union activities could lead to situations contrary to prison discipline, and even give rise to disorder. We have no difficulty in accepting that the competent authorities are entitled to regulate the activities of associations formed by inmates. It is, for instance, perfectly legitimate to prohibit collective actions that might seriously jeopardise security or order in prisons. But that is not what this case is about. The impugned interference concerns a total ban on trade unions in a prison context. [...] We are unable to identity the "convincing and compelling reasons" that could justify such a total ban. We do not even see any reasons that could be considered (merely) sufficient to justify a total ban. Any restriction on freedom of association, including trade-union freedom, and even in a prison context, must strike a fair balance between the rights of the individuals concerned and the general interest pursued by the public authorities. In our opinion, it has not been demonstrated in the present case that the balance struck was a fair one. Given their vulnerable position, prisoners may even have a strong interest in securing respect for their right to join an association that defends their individual and collective rights. […] Even if the dialogue engaged will be different when there is a special relationship of authority, as in a prison situation, it should not be excluded as a means of achieving or promoting "social justice and harmony" […], the mere fact that working conditions for prisoners are different to those for ordinary workers […], cannot in itself be a sufficient reason for banning prisoners from forming or joining a trade union" (Joint dissenting opinion of judges Lemmens and Serghides, points 6-8).

Similar arguments are presented in the literature: "There is nothing that stands against the recognition of collective labor rights for working prisoners. On the contrary, their fundamental character forbids them to be denied. [...] It is forgotten that, in addition to the conflicts that collective rights express, their enjoyment can *in fine* be a source of appeasement" (Isidro, 2022, p. 388-391). In this sense, the proposals for the recognition of collective rights for prisoners are no longer considered utopian: "all rights that can give prisoners a certain control over their work, such as the right to expression, and a *fortiori*, the rights of workers to representation, unionization or strike, are not called into question" (Shea, 2005, p. 355).

Conclusion

The work of a prisoner cannot be considered an employment relationship, because it is performed in a closed environment, or else outside the institution, but under the control of the administration for the execution of criminal sanctions, so that the criminal law situation of the prisoners

constantly determines their status as "workers". This means, more precisely, that work is one of the essential elements of prison treatment, and that, in contrast to employment, it is not performed primarily for the purpose of making work capacities available to another for compensation. This is all the more so since prisoners do not have the freedom to choose a job, but the activities that will be entrusted to them are chosen according to their abilities. Those distinctive features of the prisoner's work - due to which it is not subject to regulation of labor law, but to the law on execution of criminal sanctions - are not, however, an obstacle for bringing the working conditions of prisoners closer to the conditions of work in the general regime of employment relationships. The rapprochement, moreover, seems necessary, since international instruments for the protection of economic and social rights, as well as contemporary constitutions, do not exclude prisoners from their scope of application, but they, upon serving a prison sentence, remain the holders of all rights and freedoms, except those which are expressly limited to them by law (Schmitz, 2022, p. 72, 81). However, being the holder of rights is not the same as enjoying the conditions for their effective exercise. This is all the more because the prisoners are torn from the regular social context, they are isolated and dependent on the administration of the institution for the execution of criminal sanctions. All this, together with the fact that they are excluded from the scope of labor and social legislation, facilitates the exploitation of their work and other abuses. In this sense, in modern science, the concept of normalization of work in prisons is rightly affirmed, which implies, precisely, bringing the conditions of work in prison closer to the conditions of employees in the general regime of labor relations. This is necessary not only because fundamental labor rights belong to everyone who works, but also because the work of prisoners cannot achieve its most important goal - improving the employability of prisoners and their integration into the labor market after serving their sentence - if work in prisons exposes the risk of labor exploitation and other abuses, i.e. if prisoners work without labor rights. In contemporary law, working in such conditions is not acceptable, and it certainly will not endear the prisoners to society, nor encourage them to respect legal and social norms. These ideas are gradually being implemented in the legislation of European countries, although, from a comparative law point of view, there are very different solutions. Also, it can be observed that, compared to the normalization of living conditions in prisons, which has been intensively ensured since the seventies of the last century, the process of normalization of working conditions proceeds much more slowly (Amauger-Lattes, Schmitz, 2022, p. 11-13). Therefore, it is important that,

even with small steps, the position of working prisoners is constantly improved, primarily in the context of creating conditions for the effective exercise of fundamental (individual and collective) rights at work and in connection with work.

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Review Paper

Legal Responses to Non-Legally Caused Deviant Behavior[1]

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This paper explores the multifaceted legal responses to deviant behavior not directly caused by violations of the law, delving into the complexities arising from social, psychological, and environmental influences on behavior. Traditional legal frameworks often struggle to adequately address these forms of deviance, leading to punitive measures that may not effectively promote rehabilitation or social reintegration. Existing legal paradigms can be both restrictive and misleading, lacking adaptive and humane responses, thereby limiting our understanding of justice from a perspective that prioritizes social equity and individual well-being.

The author advocates for a paradigm shift towards restorative justice models and preventative strategies that recognize the socio-legal context of deviant behavior. This shift highlights the importance of interdisciplinary approaches that integrate insights from sociology, psychology, and criminology to develop more effective legal responses. Additionally, the paper examines the role of community engagement and social services in addressing the root causes of deviant behavior, emphasizing that legal systems must evolve to prioritize social equity and individual well-being. Ultimately, the findings stress the necessity of redefining deviance within legal contexts to foster more adaptive and humane responses, contributing to a broader understanding of justice that seeks to balance accountability with compassion.

Keywords: *Deviant behavior, Legal responses, Restorative justice, Society, Preventive strategies*

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Introduction

Deviance is a complex social phenomenon that challenges established norms and expectations within society. It encompasses a wide range of behaviors, some of which may not directly contravene legal statutes yet still disrupt social order or moral expectations. At its core, deviance can be defined as behavior that deviates from societal norms, which vary across different cultures and contexts, leading to diverse interpretations of what constitutes deviant behavior (Berkowitz, 2017). This variability illustrates that deviance is not merely a static concept, but rather a fluid construct shaped by the socio-political environment in which it exists.

While many forms of deviance are straightforward violations of law—such as theft or violence—non-legally caused deviance presents a more nuanced challenge. This type of deviance often stems from multifaceted factors, including mental illness, socioeconomic status, and environmental influences. For instance, research has shown that individuals from impoverished backgrounds may engage in behaviors perceived as deviant, not out of a desire to violate social norms, but as a response to systemic inequalities that limit their opportunities (Levin, 2018). The reality is that many individuals who engage in deviant behaviors do so because they find themselves in situations where legal and social frameworks fail to provide adequate support or alternatives.

Recognizing the socio-cultural context of deviance is essential, as behaviors labeled as deviant are often reflections of broader societal issues rather than individual moral failings (Bulatović & Jovanović, 2022, p. 283). For example, consider the issue of drug use. In some communities, drug addiction is criminalized and stigmatized, while in others, it is treated as a public health concern. This disparity highlights the need for a contextual understanding of deviance. A compassionate approach that considers the socio-economic and psychological factors influencing behavior encourages a paradigm shift from punitive measures to more rehabilitative and supportive interventions. For instance, initiatives that prioritize mental health support rather than incarceration for drug-related offenses could lead to more positive outcomes for individuals and society alike.

The exploration of non-legally caused deviance is critical for several reasons. First, it allows for a deeper understanding of the root causes of behaviors that disrupt social order. Many individuals who engage in deviant behavior do so not out of malice or intent to harm but due to circumstances beyond their control. For instance, individuals experiencing homelessness may resort to petty theft not because they wish to violate the law, but because they are driven by a basic need for survival (Levin, 2018).

Media narratives often highlight these stories, framing them within a context of desperation rather than criminality, thus illustrating the complexities surrounding deviant behavior. Such narratives can shift public perception and influence policy-making, emphasizing the need for social services and community support over punitive measures.

Furthermore, legal systems that fail to acknowledge the complexities of non-legally caused deviance may inadvertently perpetuate cycles of punishment rather than facilitating rehabilitation. Traditional punitive approaches often overlook the social, psychological, and economic factors contributing to deviant behavior, leading to recidivism and further marginalization (Mazerolle et al., 2018). This is particularly evident in cases involving mental health, where individuals may be criminalized for behaviors resulting from untreated psychological issues. For example, reports often emerge of individuals with mental health challenges facing legal consequences for actions stemming from their conditions, highlighting the urgent need for legal frameworks that recognize and accommodate mental health needs.

Differing legal frameworks categorize behaviors uniquely based on cultural, social, and economic contexts. Understanding these variations is necessary to comprehend how deviance is socially constructed and legally interpreted. For instance, the criminalization of sex work varies significantly across different jurisdictions, often influenced by cultural attitudes towards gender, sexuality, and economic opportunity. In some areas, sex work is decriminalized and viewed through a lens of labor rights, while in others, it is criminalized, further marginalizing those involved. This inconsistency underscores the necessity for legal systems to adapt and consider the societal values that influence definitions of deviance. The introduction of a more nuanced understanding of deviance invites a reevaluation of existing legal responses.

Understanding Deviance: A Conceptual Overview

Deviance cannot be fully understood without situating it within its broader socio-cultural context, recognizing that such behaviors are frequently shaped by systemic inequalities and prevailing social norms. A nuanced understanding of deviant behavior that transcends mere legal infractions requires an interdisciplinary approach that acknowledges the intricate interplay of societal, psychological, and environmental factors contributing to behaviors often labeled as deviant.

Émile Durkheim posits that deviance is a natural and necessary component of social life, contributing to social cohesion and the reinforcement of

societal norms (Durkheim, 1895). While deviant behavior can disrupt social order, it also creates opportunities for social change and a reevaluation of norms. For instance, acts of civil disobedience may challenge existing laws but also promote social justice, as seen in movements like Black Lives Matter and LGBTQ+ rights activism. Such movements illustrate how deviance can serve as a catalyst for societal progress, forcing a reassessment of accepted norms and values. This interplay between deviance and social change underscores Durkheim's argument that deviance helps establish boundaries between acceptable and unacceptable behavior, highlighting the need to address the underlying social issues that contribute to deviance.

Building on Durkheim's ideas, Robert K. Merton's strain theory offers a further perspective, suggesting that deviance arises when individuals cannot achieve culturally approved goals through legitimate means (Merton, 1968). This theory highlights the structural barriers faced by marginalized groups, emphasizing the importance of socio-economic context in understanding deviant behavior. Media often report on cases of homeless individuals resorting to petty theft, such as stealing food or basic necessities. These cases can be linked to Merton's theory, illustrating how systemic issues compel individuals to resort to deviance as a means of survival.

Transitioning from structural perspectives, Talcott Parsons emphasizes the role of social norms and values in maintaining social order (Parsons, 1991). His perspective suggests that deviance can disrupt societal equilibrium, indicating the need for collective action to restore balance. Albert Cohen's work further illustrates how marginalized youth create subcultures in response to the failure of mainstream societal norms to meet their aspirations (Cohen, 2005). These subcultures develop alternative value systems that challenge conventional expectations, providing a sense of identity and belonging. For example, young people from marginalized communities may join gangs, not merely for criminal activity but as a means of finding community and identity in an environment where they feel alienated. This underscores the importance of understanding the social dynamics within these groups, where loyalty and mutual support often outweigh the criminal elements.

Socialization plays a crucial role in shaping perceptions of deviance. From childhood, individuals learn societal norms and values through family, education, and media. These agents of socialization contribute to the understanding of what behaviors are acceptable and which are not. Deviant behavior can often stem from socialization experiences that differ from the mainstream, leading to the formation of subcultures with alternative values and norms.

Howard S. Becker argues that the labeling process contributes to the establishment of social norms, illustrating the dynamic relationship between societal reactions and deviant identities (Becker, 1997). This perspective underscores how societal responses to deviance can lead to further marginalization and reinforce deviant behavior. For instance, media frequently report on individuals who commit violent crimes and have mental health diagnoses. This stigmatization can further marginalize these individuals, hindering their reintegration into society, as they become defined by their deviance rather than their potential for recovery and contribution.

Additionally, environmental factors significantly influence behavior, as evidenced by Shaw and McKay's research on youth in impoverished neighborhoods (Shaw & McKay, 1969). Their findings highlight how systemic issues, such as poverty and discrimination, exacerbate non-legally caused deviance. For instance, media narratives about drug use often surface in discussions around legalization, illustrating how perceptions of drug-related behaviors can shift based on cultural attitudes. These changing views reflect broader societal values and the ongoing debates about morality and legality.

From a critical standpoint, Karl Marx emphasizes that those in power define what constitutes deviant behavior to maintain their dominance (Marx, 1990). In this context, laws serve as instruments of social control, often prioritizing the interests of the powerful while marginalizing those less privileged. Recidivism, where individuals return to crime after incarceration, highlights this issue. The ineffectiveness of existing legal systems and rehabilitation programs often stems from socioeconomic factors and mental health issues, leading to a cycle that is difficult to break. High recidivism rates among formerly incarcerated individuals illustrate the failure of punitive systems to address the root causes of criminal behavior.

Cognitive-behavioral theories, particularly those proposed by Aaron T. Beck, emphasize the role of distorted thought patterns in shaping deviant behavior (Beck, 1976). Individuals may engage in self-destructive behaviors, viewing them as justified responses to their circumstances. This distorted thinking can be exacerbated by environmental stressors, such as poverty or lack of support systems, leading to a cycle of negative behaviors and consequences.

Furthermore, social learning theory posits that behavior is learned through observation and imitation, particularly within peer groups (Bandura, 1977). This perspective underscores the significance of social environments in shaping behaviors deemed deviant, where individuals may adopt behaviors modeled by those around them, perpetuating cycles

of deviance. The role of peer influence can be particularly strong in adolescence, where individuals often seek acceptance and identity through their social networks.

Legal systems also play a critical role in shaping perceptions of deviance, as they reflect societal values and definitions that vary significantly across cultures (Bulatović & Pavićević, 2021, p. 38). These legal frameworks are not merely neutral systems; they embody the moral and ethical standards of a society, often influenced by prevailing power dynamics, economic interests, and historical contexts. As such, behaviors that are deemed deviant in one culture may be viewed as acceptable or even virtuous in another, illustrating the subjective nature of deviance. For instance, practices such as drug use or sex work may be criminalized in some societies while legalized or tolerated in others. This variability raises critical questions about the fairness and effectiveness of legal definitions of deviance, highlighting the need for a comprehensive understanding of the socio-political context that informs these laws.

By recognizing that legal definitions can be shaped by societal biases, we can begin to see how marginalized groups are often disproportionately affected by punitive measures. Understanding these definitions is essential for developing effective interventions that address the root causes of deviant behavior. Rather than simply perpetuating cycles of punishment, legal systems should be reformed to focus on rehabilitation and social reintegration, requiring a reevaluation of what constitutes deviance.

The socio-cultural context of deviance is essential for understanding how behaviors are defined, perceived, and responded to within different societies. Deviance refers to behaviors that violate societal norms or expectations, which can vary significantly across cultures and over time. The socio-cultural context encompasses the values, beliefs, and practices of a society that shape what is considered deviant or acceptable. What one society may view as deviant, another may accept or even celebrate. For example, certain forms of dress, language, or sexual orientation might be considered deviant in conservative cultures but embraced in more liberal societies. This variability highlights how cultural backgrounds influence perceptions of deviance, e.g. cultural relativity that stands for the principle that suggests that norms and values are not universal but rather culturally specific.

Deviance is also shaped by historical circumstances. Behaviors that were once deemed unacceptable, such as interracial marriage or same-sex relationships, may be normalized over time as societal attitudes evolve. Understanding the historical context helps to explain shifts in what is considered deviant behavior. The civil rights movements in various

countries have significantly altered perceptions of race-related behaviors, demonstrating how activism can reshape norms.

The socio-economic and political structures of a society significantly influence definitions of deviance. Groups that hold power often define what constitutes deviant behavior to maintain their status. For instance, laws related to drug use may disproportionately target marginalized communities, reflecting underlying social inequalities. This can perpetuate cycles of disadvantage, where marginalized groups face higher scrutiny and punishment for behaviors that may be overlooked or tolerated in more privileged populations.

Deviance is not inherent in an act but is a label assigned by society. Once individuals are labeled as deviant, they may internalize that identity, leading to a self-fulfilling prophecy. This process highlights the role of societal reactions and the stigmatization that often follows deviant behavior, complicating an individual's reintegration into society.

In an increasingly interconnected world, globalization influences perceptions of deviance. Exposure to diverse cultures can challenge traditional norms and lead to shifts in attitudes toward previously deviant behaviors. For example, attitudes toward LGBTQ+ rights have evolved in many parts of the world due to global advocacy efforts and cultural exchanges, illustrating how broader socio-cultural dynamics can reshape local perceptions of deviance. Media representations also play a significant role in shaping societal perceptions of deviance. News reports, television shows, and films can either reinforce stereotypes or challenge them, influencing public attitudes. The portrayal of mental health issues in the media can contribute to stigma or promote understanding and empathy, thereby affecting how deviance is perceived and addressed.

By situating deviance within its socio-cultural context, we gain insights into the underlying factors that shape behaviors and societal responses, ultimately fostering a more nuanced approach to addressing deviant behavior that promotes social equity and understanding. Recognizing the fluidity of deviance, influenced by cultural, economic, and historical forces, allows to challenge stigmas and advocate for reformative approaches that prioritize rehabilitation over punishment.

Legal Frameworks and Responses to Deviance

Traditional legal responses to deviant behavior often hinge on the premise of punishment as a deterrent. Legal systems have historically categorized deviance primarily as a violation of established laws, leading to punitive measures aimed at maintaining social order (Bulatović, 2015, p. 132).

These responses are grounded in a retributive justice model, where the focus is on assigning blame and inflicting penalties for wrongdoing. For instance, laws against theft, assault, and drug-related offenses typically invoke incarceration or fines as primary consequences for deviant actions (Tonry, 1997). However, such approaches have been critiqued for their narrow focus on individual accountability, neglecting the broader social and contextual factors influencing deviant behavior. The punitive framework fails to account for the complex realities faced by individuals, particularly those whose actions stem from socioeconomic disadvantage, mental health issues, or substance abuse. As a result, traditional legal responses often perpetuate cycles of recidivism and further marginalize already vulnerable populations (Mazerolle et al., 2018).

Laws are not neutral instruments; they embody the prevailing values and power dynamics of society. This is evident in the way certain behaviors are criminalized while others are normalized or even valorized, reflecting the interests of dominant social groups. For example, the criminalization of drug use often disproportionately impacts marginalized communities, with laws reflecting societal fears and biases rather than objective assessments of behavior (Alexander, 2010). This discrepancy underscores how legal definitions of deviance are intertwined with issues of race, class, and social status.

The power dynamics at play can be traced back to historical contexts where laws were designed to maintain the status quo. Karl Marx's perspective on law as a tool of the ruling class emphasizes that those in power define what constitutes deviance to sustain their dominance (Marx, 1990). Consequently, behaviors associated with marginalized groups are more likely to be deemed deviant, leading to harsher legal responses. This is exemplified by the differential treatment of crack cocaine versus powdered cocaine in the United States, where harsher penalties for crack cocaine, predominantly used by African American communities, reflect deep-rooted racial biases in the legal system (Tonry, 1994).

Legal responses to individuals with mental health issues often reveal the inadequacies of traditional punitive measures. Many jurisdictions criminalize behaviors resulting from untreated mental health conditions, leading to incarceration rather than treatment. For example, individuals experiencing psychosis may engage in behaviors deemed deviant, such as public disturbances or aggression, which are subsequently met with arrest rather than mental health intervention (Lamb & Weinberger, 1998). This cycle of criminalization further exacerbates the stigma surrounding mental health, hindering access to necessary support services. Similarly, homelessness is often criminalized through laws prohibiting behaviors

associated with being unhoused, such as loitering or sleeping in public spaces. These legal responses do not address the root causes of homelessness, such as poverty, lack of affordable housing, and mental health issues. Instead, they perpetuate the marginalization of homeless individuals, who frequently encounter law enforcement rather than social services. A notable example is the "criminalization of homelessness" movement in several U.S. cities, where ordinances targeting the homeless have led to increased arrests without providing viable alternatives (Hoffman, 2016).

The legal response to drug addiction has also exemplified the shortcomings of punitive measures. Rather than treating substance abuse as a public health issue, many legal systems continue to criminalize addiction, leading to incarceration for non-violent drug offenses. This approach fails to consider the underlying causes of addiction, such as trauma, mental health disorders, and socioeconomic factors. For instance, the War on Drugs in the U.S. has resulted in disproportionately high incarceration rates for individuals from marginalized communities, with minimal focus on rehabilitation or harm reduction strategies (Alexander, 2010).

Punitive measures have limited effectiveness in addressing the complexities of deviant behavior. Research indicates that incarceration does not significantly deter crime and often leads to higher rates of recidivism (Petersilia, 2003). The lack of rehabilitative support in correctional facilities further exacerbates this issue, as individuals often leave prison without the necessary resources to reintegrate into society.

Moreover, punitive measures tend to overlook the social and psychological factors that contribute to deviant behavior. For instance, individuals who experience homelessness or mental health issues are often trapped in cycles of criminalization, receiving punitive responses rather than the support needed to address their underlying challenges. This is particularly evident in the context of mental health, where individuals are frequently incarcerated rather than provided with appropriate treatment, leading to repeated interactions with the legal system (Lamb & Weinberger, 1998).

The failure of punitive measures to effectively address non-legally caused deviance underscores the necessity for a paradigm shift towards more rehabilitative and restorative approaches. By shifting the focus from punishment to support and rehabilitation, legal responses can better address the root causes of deviance, fostering more positive outcomes for individuals and society as a whole.

Restorative Justice and Alternative Legal Approaches

Restorative justice represents a transformative approach to addressing crime and deviant behavior by emphasizing healing and community involvement over punishment. Unlike traditional legal systems that prioritize retribution, restorative justice seeks to repair the harm caused by criminal behavior through collaborative processes that engage victims, offenders, and the broader community. This shift in focus fosters understanding, accountability, and the potential for reintegration, ultimately promoting social harmony.

At the heart of restorative justice is the principle of inclusivity. Victims are encouraged to share their experiences and express their feelings, while offenders are provided with an opportunity to acknowledge their actions and understand their impact. This process cultivates empathy and often leads to more meaningful outcomes than conventional punitive measures. The restorative justice model operates under the belief that crime is not just a violation of the law but a breach of relationships that necessitates collective healing (Zehr, 1990).

Research indicates that restorative justice practices can significantly enhance victim satisfaction and reduce recidivism rates. For example, a meta-analysis conducted by the Campbell Collaboration found that restorative justice programs are associated with a 14% reduction in repeat offenses compared to traditional justice approaches (Koss, 2018). These findings suggest that restorative practices can foster personal accountability and community support, creating pathways for rehabilitation.

One illustrative case of restorative justice in action is New Zealand's Family Group Conference (FGC) model, which has been integrated into the youth justice system. This approach empowers families and communities to play an active role in the justice process, resulting in improved outcomes for young offenders. Studies have shown that FGC participants experience lower recidivism rates and higher levels of victim satisfaction, highlighting the effectiveness of community engagement in addressing deviant behavior (Maxwell & Morris, 2002).

In the United States, the Colorado Restorative Justice Program has successfully implemented restorative practices in schools and juvenile justice systems. Evaluations of the program revealed a significant decline in disciplinary incidents and improved peer relationships among students. This success underscores the potential for restorative justice to create safe and supportive environments, transforming school climates and reducing the likelihood of future deviance (Gonzalez, 2016).

The concept of restorative justice extends beyond individual cases to address broader societal issues. In South Africa, the Truth and Reconciliation Commission (TRC) exemplified the potential for restorative justice to confront historical injustices. By allowing victims to share their experiences and perpetrators to confess their actions, the TRC aimed to foster national healing in the aftermath of apartheid. Although not without controversy, the TRC illustrated how restorative approaches can facilitate societal reconciliation and promote understanding among diverse groups (Tutu, 1999).

Community engagement is essential to the success of restorative justice initiatives. By involving community members in the justice process, restorative practices create a sense of shared responsibility for safety and well-being. This engagement helps to break down stigmas associated with deviance, fostering a culture of empathy and support. Social services play a crucial role in this framework by providing resources such as counseling, education, and job training. Addressing the underlying issues that contribute to deviance—such as mental health challenges or substance abuse—enhances the effectiveness of restorative justice practices (Lamb & Weinberger, 1998).

Ultimately, restorative justice offers a compelling alternative to traditional punitive measures. By prioritizing healing, accountability, and community involvement, this approach not only addresses the immediate harm caused by deviant behavior but also contributes to long-term societal change. As communities continue to grapple with the complexities of crime and deviance, embracing restorative justice principles can lead to more compassionate and effective responses that foster social equity and inclusion.

Preventive Strategies and Interventions

Addressing the root causes of deviance requires a shift from reactive legal responses to proactive preventive strategies. By focusing on prevention, societies can mitigate the conditions that foster deviant behavior, ultimately promoting healthier communities and reducing the need for punitive measures. Preventive strategies encompass a range of interventions, including mental health support, educational initiatives, and community development programs, all aimed at addressing the underlying issues that contribute to deviance.

Prevention plays a crucial role in addressing deviance by targeting its root causes. Factors such as poverty, lack of education, and mental health issues significantly influence individuals' likelihood of engaging in deviant

behavior. Research shows that intervening early can reduce the incidence of deviance and its associated social costs. For example, the World Health Organization emphasizes that mental health promotion and early intervention can prevent behaviors associated with substance abuse and criminality (WHO, 2018). By investing in preventive measures, societies can foster resilience and provide individuals with the tools necessary to navigate life's challenges, ultimately reducing the likelihood of engaging in deviant behavior.

Numerous successful preventive programs illustrate the effectiveness of targeted interventions in reducing deviance. Mental health support initiatives, for instance, play a pivotal role in addressing behaviors linked to untreated psychological issues. Programs like the Assertive Community Treatment (ACT) model have shown significant success in improving outcomes for individuals with mental health challenges. ACT provides comprehensive support, including counseling, medication management, and community resources, significantly reducing hospitalizations and interactions with the criminal justice system (Stein & Test, 1980).

Educational initiatives also serve as powerful preventive measures. Programs that focus on social-emotional learning (SEL) in schools have demonstrated positive outcomes in reducing behavioral issues and improving academic performance. According to research, SEL programs led to a 23% reduction in conduct problems among students. By equipping young people with emotional intelligence and conflict resolution skills, these programs not only enhance individual well-being but also contribute to a more positive school climate, reducing the likelihood of deviant behavior (Durlak et al., 2011).

Community development initiatives are equally vital in fostering resilience and social cohesion. Programs that promote economic development, job training, and social services can create supportive environments that reduce the incidence of deviance. For example, the Harlem Children's Zone in New York City has successfully integrated education, health, and community services, leading to improved outcomes for children and families in the area. The program's holistic approach has contributed to reduced crime rates and improved educational attainment, demonstrating the effectiveness of community-driven interventions (Tough, 2008).

Interdisciplinary approaches are essential for developing effective preventive strategies. By integrating insights from fields such as psychology, sociology, education, and public health, practitioners can create comprehensive interventions that address the multifaceted nature of deviance. For example, collaborations between mental health professionals, educators, and community organizations can lead to more

holistic support systems that address the diverse needs of individuals at risk of engaging in deviant behavior.

The implementation of trauma-informed care in various settings exemplifies the power of interdisciplinary approaches. Recognizing that many individuals exhibiting deviant behavior have experienced trauma, practitioners can tailor interventions that promote healing and resilience. This perspective shifts the focus from punishment to understanding, fostering environments where individuals feel safe and supported. Such collaborations can enhance the effectiveness of preventive programs, ensuring that they are responsive to the unique challenges faced by individuals and communities.

Evaluating the effectiveness of preventive strategies is crucial for understanding their impact and making necessary adjustments. Rigorous research and data collection can provide insights into the success of specific programs. For instance, evaluations of mental health initiatives often measure outcomes such as reduced hospitalizations, improved quality of life, and decreased criminal behavior. Similarly, educational programs are assessed based on academic performance, behavioral changes, and long-term outcomes.

Meta-analyses and systematic reviews have shown that well-designed preventive programs can yield significant benefits. For example, a comprehensive review of community-based prevention programs highlighted an overall reduction in criminal behavior and improvements in social functioning among participants (Welsh & Farrington, 2000). Such evidence reinforces the importance of investing in preventive measures and encourages policymakers to prioritize these initiatives over reactive legal responses.

The Role of Social Perception and Media

The portrayal of deviance in the media significantly shapes public perceptions and attitudes toward individuals who engage in behaviors deemed deviant. This interplay between media representations and societal understanding is crucial for addressing the stigma surrounding deviant behaviors and fostering a more nuanced discussion about their root causes. Media representations of deviance often reinforce stereotypes and shape societal attitudes. Through news coverage, television shows, films, and social media, the portrayal of individuals engaging in deviant behavior can lead to heightened fear, misunderstanding, and social stigma. For example, sensationalized media reports on violent crimes tend to emphasize the criminality of the individual rather than the complex socio-economic factors that may contribute to such behaviors. This narrow focus

can lead the public to view deviance as a character flaw rather than a product of systemic issues.

Research indicates that media framing plays a pivotal role in shaping public perceptions. Studies have shown that individuals exposed to negative portrayals of deviance in the media are more likely to adopt punitive attitudes toward those labeled as deviant (Dixon & Linz, 2000). This creates a cycle of stigmatization, where individuals are seen as threats to society rather than as people with complex backgrounds and challenges. Consequently, media narratives can have profound implications for public opinion and policy-making, often leading to harsher legal responses to deviant behaviors.

Stigmatization is a powerful force that affects individuals labeled as deviant, often exacerbating their marginalization and hindering their reintegration into society. When individuals are labeled as deviant, they may internalize this identity, leading to a self-fulfilling prophecy where they engage in further deviant behavior due to societal rejection. This process can be described as a form of "spoiled identity", where the individual's sense of self becomes intertwined with societal labels (Goffman, 1963).

The impact of stigmatization can manifest in various ways, including social isolation, mental health issues, and barriers to employment and housing. For instance, individuals with criminal records often face significant challenges in securing stable employment due to societal perceptions that equate past behavior with inherent criminality. This stigmatization not only affects individual well-being but also perpetuates cycles of poverty and recidivism, as marginalized individuals struggle to find support and acceptance within their communities.

Changing the narratives surrounding deviant behavior requires intentional efforts to shift public perception and reduce stigma. One effective strategy is the use of counter-narratives that highlight the human experiences and systemic factors contributing to deviance. By showcasing stories of resilience and recovery, media can help foster empathy and understanding among the public. For example, documentaries and feature articles that focus on individuals overcoming addiction or mental health challenges can illuminate the complexities of their experiences, encouraging a more compassionate perspective. Additionally, community-based initiatives that engage individuals labeled as deviant in storytelling and advocacy can empower them to reclaim their narratives. Programs that facilitate discussions about personal experiences with deviance can help humanize those affected and challenge stereotypes. These initiatives can also work to educate the public on the socio-

economic and psychological factors that contribute to deviant behavior, promoting a more informed understanding of the issue.

The impact of media on social policy and public opinion is exemplified in various case studies that illustrate the power of narrative change. One notable example is the coverage of the opioid crisis in the United States. Initially, media narratives often framed addiction as a moral failing, stigmatizing individuals struggling with substance use disorders. However, as the crisis evolved, media representations began to emphasize the public health dimensions of addiction, leading to a shift in public perception. This change in narrative contributed to the implementation of harm reduction strategies and increased funding for treatment programs (Alexander, 2018).

Another case study involves the portrayal of mental health in the media. Social marketing campaigns like "Time to Change" launched in 2007 in the UK have worked to challenge negative stereotypes and promote understanding of mental health issues. By utilizing positive media representations and personal stories, these campaigns have succeeded in reducing stigma and improving public attitudes toward individuals with mental health challenges (Thornicroft et al., 2016). Such initiatives underscore the potential of media to effect meaningful change in public perception and policy.

The role of social perception and media in shaping public attitudes toward deviance is profound. Media representations can reinforce stereotypes and stigmatize individuals labeled as deviant, perpetuating cycles of marginalization. However, through strategic narrative change and community engagement, it is possible to foster a more empathetic understanding of deviance and advocate for policies that prioritize rehabilitation and support over punishment. Recognizing the power of media to influence societal attitudes can pave the way for a more just and equitable response to deviant behavior.

Reimagining Justice: Insights and Pathways for Legal Reform

The evolving understanding of deviant behavior necessitates a critical reassessment of existing legal frameworks and social policies. Traditional punitive approaches have often proven inadequate in addressing the root causes of deviance, leading to cycles of recidivism and perpetuating social inequities. A focus on rehabilitation and social equity can inform the development of a more effective legal system that promotes positive societal outcomes.

Legal reform should prioritize a transition from punitive measures to approaches centered on rehabilitation. This shift requires a comprehensive

re-evaluation of laws and policies to prioritize individual needs rather than solely imposing punitive measures. For instance, the implementation of restorative justice principles can facilitate meaningful dialogue between offenders and victims, promoting understanding and healing instead of perpetuating cycles of harm (Zehr, 2002).

Moreover, the legal system should embrace diversion programs that redirect individuals away from traditional incarceration towards community-based alternatives. Such programs, particularly those addressing substance use disorders and mental health issues, have demonstrated significant potential in reducing recidivism rates and improving long-term outcomes. For example, countries like Norway and Sweden, which emphasize rehabilitation within their criminal justice systems, have reported lower recidivism rates compared to more punitive systems (Tonry, 2004).

Integrating social services into legal responses is critical for effectively addressing the multifaceted social factors that contribute to deviant behavior. Collaborative efforts between legal entities and social service organizations can foster a holistic approach to justice. For instance, partnerships between court systems and mental health providers can ensure that individuals facing psychological challenges receive appropriate treatment rather than punitive measures (Steadman et al., 2000). Additionally, the implementation of case management systems can facilitate connections to essential resources, including housing, employment, and healthcare. By addressing the underlying issues that contribute to deviant behavior, we can reduce the likelihood of reoffending and enhance successful reintegration into society. Community-based programs that provide support and mentorship can play a pivotal role in assisting individuals as they navigate the challenges associated with reentry.

Dynamic legal frameworks are essential, adapting to the changing needs of society and the individuals they serve. Continuous evaluation of legal responses to deviance is crucial for assessing their effectiveness and identifying areas for improvement. This can be achieved through comprehensive data collection and analysis aimed at monitoring recidivism rates, the success of interventions, and community impacts.

Engaging a diverse range of stakeholders—including individuals with lived experiences, community organizations, and legal professionals—in the evaluation process can yield valuable insights into the effectiveness of current programs and policies. Such participatory approaches ensure that reforms are grounded in the realities faced by those most affected by the legal system, fostering a sense of ownership and commitment to change.

Public awareness campaigns are vital for challenging the stigmas associated with deviant behavior and promoting a more informed understanding of its complexities. Education serves as a powerful tool for reshaping public perceptions and fostering empathy toward individuals labeled as deviant. Campaigns that highlight personal stories of recovery and resilience can humanize those affected and encourage a shift away from punitive attitudes. For example, initiatives focused on mental health awareness can demystify the challenges faced by individuals with mental health conditions, promoting understanding and reducing stigma. Collaborative efforts among government agencies, non-profits, and media organizations can amplify these messages, reaching broader audiences. Furthermore, incorporating educational programs into school curricula can cultivate a culture of understanding and compassion from an early age, equipping future generations with the tools to address deviance through empathy rather than judgment.

To effectively address deviant behavior through legal reform and social equity, a comprehensive approach that prioritizes rehabilitation, integrates social services, and fosters public understanding is essential. By implementing these recommendations, we can create a legal framework that holds individuals accountable for their actions while supporting their growth and reintegration into society. Emphasizing rehabilitation over punishment, engaging community resources, and challenging stigmas will contribute to healthier and more equitable communities where individuals can thrive.

The future of legal responses to non-legally caused deviance demands a transformative shift. The complexities inherent in deviant behavior require an approach that transcends traditional punitive measures, focusing instead on understanding and addressing its root causes. This evolution is vital for promoting individual rehabilitation and social reintegration.

Restorative justice emerges as a particularly promising framework for addressing non-legally caused deviance. By centering on healing and accountability rather than punishment, restorative justice practices foster meaningful dialogue between offenders and victims, allowing for the acknowledgment of harm and the exploration of reparative actions. This model not only benefits those directly involved but also contributes to stronger community ties and overall social cohesion.

As restorative justice gains traction, it is crucial to ensure its equitable implementation. Engaging marginalized communities to understand their unique challenges and incorporating their voices into the design and implementation of restorative processes will enhance the inclusivity and effectiveness of the justice system, respecting the experiences and needs of all community members.

The integration of social services into legal responses must remain a priority in addressing the underlying issues that contribute to deviant behavior. Future policies should encourage collaboration among legal entities, mental health services, and community organizations to develop comprehensive support systems for individuals navigating the justice system. Access to resources such as mental health care, housing assistance, and vocational training is essential for reducing recidivism and promoting successful reintegration.

Community engagement is another critical element in shaping effective legal responses. Empowering local organizations and individuals to participate in policy development fosters a sense of ownership and accountability, enhancing the relevance and effectiveness of interventions while strengthening the social fabric.

Challenging stigmas and promoting narratives that emphasize recovery and resilience can foster a more compassionate public discourse. Education and awareness efforts must aim to inform the public about the complex factors contributing to deviant behavior and highlight the potential for rehabilitation. Collaborative campaigns with media outlets can amplify these messages, encouraging a cultural shift toward empathy and support rather than punishment and exclusion.

Addressing deviant behavior through legal reform and social equity requires a multifaceted approach that prioritizes rehabilitation, integrates social services, and fosters public understanding. By adopting these recommendations, we can construct a legal framework that not only holds individuals accountable for their actions but also nurtures their potential for growth and reintegration into society. Emphasizing rehabilitation, engaging community resources, and challenging societal stigmas could ultimately lead to healthier, more equitable communities where all individuals have the opportunity to thrive.

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Review Paper

The Right of Prisoners to Freedom of Expression

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

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equally valid when it comes to persons serving shorter prison sentences, detainees, and persons in relation to which some other form of deprivation of liberty was applied.

Keywords: *Prison, prisoner, Freedom of expression*

Introduction

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Individualistic model

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Public interest-based model

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

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

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

[18] *Ibidem*, 117.

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

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

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

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

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

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

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

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

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

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

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

Limitations of the Prisoners' Right to Freedom of Expression

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

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

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

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

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

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

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

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

Final Considerations

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

[23] *Nilsen v. the United Kingdom*

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

[25] *Enea v. Italy*.

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

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

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

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

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Review Paper

Legal Framework of Criminal Liability of Juvenile Criminals in Romania[1]

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Although the level of life in society has evolved, the Romanian society, as the Western civilization in general, still faces a significant number of cases of juvenile crimes, and certainly this number is much higher than is desired by the authorities. This article has as a goal to provide an overview of the criminal liability of minors in Romania (defined as persons under the age of 18). This article will also provide a broad view of the criminal sanctions that can be applicable to minors who committed crimes. Of course, the current legal framework has resolved some issues that were faced in the past, but in some cases has generated others, which will be underlined, and, when possible, also solutions will be provided. The procedure of work and the methods for this article included the analysis of the legal national provisions, the read of the main legal authors that commented the relevant legal provisions. We have also included several psychology studies that have analyzed the particularities of the juvenile criminals, which differ in many aspects from adult criminals, and their needs that should be taken into consideration by the legal system that must, especially in their case, not only punish, but also educate and transform.

Keywords: *Juvenile criminals, Minor Offender, Educative measures, Justice for minors*

Introduction – about juvenile crime and the states (criminal law) response(s)

Although the Western society has evolved, crimes are still a reality, even if we talk about mostly about non-violent crimes, rather than 150 years ago. In all Western civilization probably, some of the more common

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juvenile offenses include: theft, larceny, alcohol offenses, disturbing the peace, drug offenses, vandalism, assault, robbery, criminal trespass, harassment, fraud, burglary, loitering, possession of stolen property, possession of weapons and crimes committed on behalf of gangs. Juvenile offenders differ from adult offenders in a variety of ways, and juveniles' offending profiles differ from adults' offending profiles. Juvenile delinquency has become a big concern all across the world in recent years. It is characterized as behavior of minors that has legal repercussions for engaging in such activities which are prohibited under statutory and criminal law. In general, criminal activities committed by juveniles are referred to as juvenile delinquency. Juvenile delinquency is an indicator of a country's overall morality and law and order, and so youth crime can be a source of' moral panics. However, there cannot be single solitary elements that can be attributed to the cause of this increasing global problems.

In the general image the Romanian society has, in comparison with adults, juveniles tend to be overrepresented as the perpetrators of certain crimes (e.g. graffiti, minor thefts, minor violence crimes) and under-represented as the perpetrators of others (e.g. fraud, road traffic offences and crimes of serious violence). In addition, by comparison with adults, minors are at increased risk of victimization (by adults and other juveniles), stigmatization by the criminal justice system and peer contagion. Due to their immaturity, juveniles are also at increased risk of a range of psychosocial problems (such as mental health and alcohol and other drug problems) that can lead to and/or compound offending behavior. It should be noted, however, that while juvenile offenders differ from adults in relation to a range of factors, juvenile offenders are a heterogeneous population themselves. Sex, age and Indigenous status, for example, play a part in shaping juveniles' offending behavior and criminogenic needs and these characteristics should be considered when responding to juvenile crime. Also, it must be pointed out that, in the Romanian literature, it was considered that juvenile crimes reflect the inability of the minor to adapt to the judicial and moral system of the society, constituting one of the major social problems the society is facing.

General lines of the policies regarding juvenile criminals

One of the most important aspects the criminal law field must answer to is the phenomenon of juvenile crimes – meaning crimes committed by young persons and children. This policy implies several lines of action. The justice for minors has represented, along the ages, through, a manner the evaluate the evolution of the society, taking into account the options of criminal policy and the criminal laws adopted by the lawmaker. When

talking about justice for minors the same author states that always two concepts are put into balance: the education of the minor offender and sanctioning the minor.

Firstly, the lawmaker must draw an age limit for criminal liability of persons who committed crimes – an although this aspect could seem like a well-established one (since the evolution of psychology and neurosciences), and maybe common to all European countries. We would think that the specialists have, so far, established a general age limit from when the minor has discernment, and most of the lawmakers have listened to them. Actually, this is not the case, and we still face very different age limits for criminal liability in different countries, although these countries share the same social and historical background, and should be inclined, theoretically, impose the same limit.

Secondly, the lawmaker must establish special rules for sanctioning and also special sanctions for the juveniles who had discernment at the moment of the commitment of the crime. This comes as no surprise, since we have already established that the minor has different needs and different characteristics from an adult offender, and, therefore, should be treated differently. Of course, besides from the punitive aspect of the sanctions, the educative goal is extremely important.

Thirdly, the lawmaker should take into consideration and should special rules of judgment for juvenile criminals. The need for a public attorney, the need for a specialized judge, the judgement to be not in a public but private organization, all these and others should be a part of the set of procedural rules that are specially designed considering all the juvenile criminal's particularities.

Last but not least, and seen as a more general perspective and policy, social and educational measures must be taken, at all levels of the society: in schools, in neighbourhoods, city halls, etc. These measures should have as a goal to prevent the commission of juvenile crimes, and to educate the minors regarding their criminal responsibility, the consequences of their actions, and the possibility to face a criminal record. The state should also try to identify the causes of commission of juvenile crimes and prevent them, as well as to offer alternative measures to criminal behavior. These measures should be a part of different governmental strategies, and will not be the object of this article.

Regarding juvenile crimes, it was appreciated in the literature that around the world there are variable and inadequate legal frameworks that are not age-appropriate, there is a lack of age-appropriate services and

establishments, and a lack of a specialist workforce, leading to challenges around training and supervision to work with this vulnerable population[3].
In the Romanian legal literature[4] it has been argued that the juvenile crime phenomenon rises complex problems regarding the prevention part but also, and especially, in the part of fighting against it. This is such a complex issue because, from a causality point of view, there are several factors involved in the commission of crimes by minors, such as: lack of experience in the social life of the minor (making the minor to not fully understand the consequences of his acts and of his dangerous social behavior), the lack of education regarding the sanctions that can become applicable, the family problems that perhaps the minor faces, school issues, negative influence of other persons – even adults etc.
Given all of the above, of course every country struggles to find the best system to deal with juvenile crimes, at the same time trying to stay aligned with the international trend. This article will offer an overview of the Romanian perspective, given that ten years have passed since a significant change in the criminal law legislation happened: the new Criminal Code of Romania entered into force ten years ago (in the 1st of February 2014), introducing a different approach for juvenile criminals. Therefore, the analysis will focus on the substantial problems of criminal law regarding the age limit of criminal responsibility and the special criminal law sanctions applicable to minors who committed crimes. This article will leave aside the other more general problems of prevention of juvenile crimes which, although very interesting, are not part of the criminal law; it will also leave aside the problems and regulations regarding the procedural aspects, given mostly to lack of space. The procedure of work and the methods used for this article included the analysis of the legal national provisions, the read of the main legal authors that commented the relevant legal provisions. We have also included several psychology studies that have analyzed the particularities of the juvenile criminals, which differ in many aspects from adult criminals, and their needs that should be taken into consideration by the legal system that must, especially in their case, not only punish, but also educate and transform.

[3] Susan Young, Ben Greer, and Richard Church, *Juvenile delinquency, welfare, justice and therapeutic interventions: a global perspective,* available online at https://www.ncbi.nlm.nih.gov/pmc/articles/PMC5288089/, accessed at 04.10.2024.
[4] Constantin Mitrache, Cristian Mitrache, *Drept penal român. Partea generală,* editura Universul Juridic, București, 2019, P. 440.

It was stated out that, when analyzing the most efficient ways of preventing and fighting the crime phenomenon in persons underage, one of the issues of significant importance is the age limit for criminal liability, this being, theoretically, the age from which, according to the psychological research, it is appreciated that the minor understands how dangerous his conduct[5] is to society. Of course, an important element in determining the criminal responsibility is identifying the age of the child[6] and to establish if he passes the age limit. The age limit is established in order set a boundary: it is generally accepted in the society that a child under the age of "X" years does not have discernment, meaning he does not understand completely the consequences of his actions/inactions, or he cannot control them, and, therefore, should not be held criminally relevant. Before talking about the specific limitation in Romania, it must be said that it could be argued that an age limitation is not necessary in order to establish the criminal liability, because in every case, a psychiatric evaluation of the discernment could be made. A general age limitation of criminal liability that draws a line under which, no matter the seriousness of the crime, the minor will not be held responsible, could be argued as having as a consequence that, in some cases, the minor that had the discernment at the moment of the commitment of crime, will not be punished. Given that every person is different, it could be said that in some cases, a minor that is under the age of 13 of 14 could have discernment while other maybe does not.

On the other hand, at least in Romania, such an approach would completely block the judicial system – given the fact that a psychiatric expertise requires a specialized trained doctor (with at least six years of medical school and another five of residency) which Romania does not have in a sufficient number, the trial would have such a long duration that, by the time the sanction would be applied, it would completely lose its purpose. Therefore, the lawmaker in Romania opted to introduce a limit for criminal liability of juvenile crimes, with the risk of, in very rare cases, "let one escape". This means than the lawmaker decided that if, in some cases, minors who committed the crime are under the age limit although they had discernment,

[5] Constantin Mitrache, Cristian Mitrache, *Drept penal român. Partea generală,* editura Universul Juridic, București, 2019, P. 440.

[6] Shohreh Mousavi, Behnam Rastegari, Rohaida Nordin, *Legal Perspective of the Criminal Responsibility of Children: Contemporary Period*, avaible online at www. academia.com, accessed at 04.10.2024.

it is the rick that the state is willing to assume (considering the fact that these cases should be extremely rare).
In the present days, in Romania, after the age of 18, a person committing a crime is liable and a punishment with prison or a criminal law fine can be applied. If the offender in under the age of 14 at the moment of commitment of crime (not necessarily at the moment when the dangerous result of the crime is produced), he/she is absolutely presumed to have committed the crime without discernment. This is expressly regulated by article 113 of the Romanian Criminal Code, that states that the offence committed by the person under the age of 14 is not considered imputable. The lack of discernment before the age of 14 is an absolute presumption, and even if through psychological and/or psychiatric exams it could be proven that the offender knew exactly what he was doing, and controlled precisely his action/inactions that produced the dangerous result, criminal liability still could not be activated in Romania, and no criminal law specific sanctions for minor could be applied.
More problematic is the age between 14 and 16 years old, when the Romanian law states a relative presumption of lack of discernment. In this case, an offender with the age between 14 and 16 at the moment of commitment of crime is presumed without discernment, but if, though a medical expertise, it is shown that, at that precise moment of the commitment of crime, discernment was presents, meaning the minor knew and understood what he or she was doing, understood the consequences of his actions/inactions and controlled his actions/inactions, then he will be held criminally liable and a specific sanctions for minors will be applied.
In the 19th century, the Romanian legislation considered that any person eight years old can be held criminally liable. It must be said that this rather low age limit is now considered an expression of the society's conception regarding children (let us not forget that all over Europe children could work or get married from very young ages). Since the begging of the 20st century, and during the communist regime, this age limitation was 14 years old. It must be mentioned that the problem of the age limit arose some debates in Romania before the adoption of the new Criminal Code. At some point there was a proposal to lower the age of minor's responsibility from the age of 14 to the age of 13. The initiators of the proposal of lowering the age limit by one year argued that there has been an increase in the number of criminal acts committed by minors under the age of 13, this meaning that most of them know what they are doing and, probably, they have the discernment need to attract criminal responsibility. Another argument that was invoked was that the statics showed that, in what regards the existence of discernment in cases of minors with the age

between 14 and 16, in more than 90% of the cases, it was considered by the psychiatry specialists that it existed and was present at the moment of the commitment of the facts, and that the minor understood very well what he was doing. This would imply that, probably, even before the age of 14, such a discernment exists, which was appreciated as a normal situation given the technological and social progress that favors a faster development of the child[7]. Another argument invoked by the initiators of this proposal was the necessity to uniformize the Romanian law and bring it to the European level, aligning our regulation to the regulations of most European countries. In this context, it was mentioned that some European countries have lowered the age limit of criminal responsibility for minors (10 years in France, Great Britain and Switzerland, 12 years in Greece and Holland). However, in the end, such a proposal was abandoned, and the age limit for criminal liability of juvenile criminals remained the age of 14 years old.

A question that must be answered is whether the minor will commit the crime in the day where he turns 14 years old. Is he going to answer for its acts (if, of course, discernment is present, as established by article 113 of the Romanian Criminal Code)? Or, will he benefit from the absolute presumption of lack of discernment? The Supreme court of Justice already addressed this question since 1972 (decision nr. 569) concluding that he will be held liable if the crime is committed precisely the day the minor turns 14 years old. As a consequence, if a crime is committed exactly the day when the person turns 18 years old, it will answer for that crime as an adult, meaning that a prison punishment or a criminal law fine could be applied.

Of course, if the offender is under 14 years old, other measures can be taken (established in Romania by Law 272/2004 regarding children rights, but also by other laws), but these measures are not criminal law sanctions, and do not imply the criminal law responsibility. On the contrary, those measures are protective measures that have as a goal to protect the minor, meaning the offender, from the environment that made him commit the crime. Of course, there are situations when a person is under the age of 14, but very close to it (say 13 and six months old) and they commit the crime by their one mind, meaning nobody influenced or determined them in a casuality meaning. In such a situation, not much can be done by the Romanian law, and, of course, nothing can be done from the perspective of the Romanian Criminal law of sanctions.

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[7] F.M. Vasile în V. Cioclei, *Codul penal. Comentariu pe articole*, C. H. Beck, București, 2016, p. 372.

Overview of the specific sanctions applicable to juvenile criminals before 2014

Of course, the sanctions applicable to minors that commit crimes must correspond and must respond to the particularities of the offender, especially those that derive from the young age of the criminal. On the other hand, from a modern perspective, it must be said that the sanctions must have in the center, or as a main goal, the education of the minor. We should have social measures of defense that would tend to reeducate the minor (who, theoretically, has a poor education since it committed crimes)[8] rather than to punish him for committing a crime.

In the 19th century, the Romanian legislation considered that any person eight years old can be held criminally liable and prison punishment could be applied (of course, at that time, there was no discussion about educative measures and the educative goal of the criminal sanctions, and the punitive aspect was the main aspect). The Romanian legislation began the 20st century by establishing prison time for minors who committed offences (even if not as harsh as for adults – this being translated in less prison time if we talked about a juvenile criminal).

A surprising change in perspective comes in the communist past of Romania. In 1977, by Law nr. 218/1977, the Criminal Code was modified, and only educative measures were established for the minors, no more prison punishment being possible. This was such an innovative aspect at the time, and seen retroactively, especially given the fact that we were talking about an authoritarian form of ruling. In order to institute only and educative measures system of sanctions for juvenile criminals, it was argued that it is not necessary for a juvenile offender to suffer a punishment in order to understand the wrongdoing that he committed, especially given the adverse effect a prison punishment could have (also, the fact the minor could be in contact to very dangerous offenders was argued as being against the minors' and the society's interest)[9]. It is very surprising that a regime that did not promote human rights and actually acted against these important European values, put into balance the educational needs of the minor offender, the need to sanctions him and also the dangers for the minor if the minor was sent into prison with adults.

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[8] Constantin Mitrache, Cristian Mitrache, *Drept penal român. Partea generală,* editura Universul Juridic, București, 2019, P. 440.

[9] Viorel Pașca, *Drept penal. Partea generală,* editura Universul Juridic, București, 2015, p. 488.

A shift in the paradigm happened after the fall of the communist regime in 1989, and this perspective was abandoned in 1992. By Law nr. 104/1992 a mixed system of both prison time (applicable in case of severe crimes) and educative measures (applicable in case of minor crimes) was established.
The educative measures were regulated by article 101 of the former Romanian Criminal Code, and the „softest" one was the reprimand. Reprimand meant that the minor was basically given a lecture by the judge regarding the gravity of his conduct, the importance of respecting the laws and rules of the society he lives in, and he was advised that he should correct his behavior, otherwise a more severe educative measure or a punishment with prison could be applies (if another offence was committed).
In contradiction, the most severe sanction was prison time. This punishment could be applied, according to article 109 of the former Romanian Criminal Code, only if the court decided that an educative measure was not sufficient in order to obtain the correction of the minor's behavior (condition regulated in article 100 of the former Romanian Criminal Code). However, in order to apply a more indulgent regime of criminal liability, article 109 stated that the special limits of punishment will be reduced, in case of a minor offender, by half, and, if the case was for a life imprisonment, this should be replaced with a punishment with limits between 5 to 20 years.

Sanctions applicable to minors after 2014 – a change in paradigm

A shift in paradigm was brought by the new Criminal Code, that entered into force in Romania, in the 1th of February 2014. If the rules of criminal liability considering the age of the offender have not changed (the age limit remaining still 14 years old), not the same can be said about the types of sanctions that can be applicable in the case of juvenile crimes.
First of all, and considered a step ahead by the scholars and practitioners, no more criminal punishments could be applicable to minors anymore, no matter how serious the crime would be. In this innovative perspective, the lawmaker designed only educative measures that are the sanctions applicable if a minor is held criminally liable. The educative measures have, as a main goal, the education of the minor, making the offender understand that the criminal behavior is not a socially accepted behavior, and trying to offer alternatives to the commitment of crimes. This change in legislature was introduced because the lawmaker realized that minors are fragile and prison time could affect them in a significant manner. As

opposed to punishments, where the coercive force is on the main level, the educative measures have a strong, important and main educative layer.
A very important aspect to be mentioned is that in the Romanian legislation, the educative measure does not represent habitual criminality (recidivism), meaning that they do not appear in the criminal record of the offender and do not imply such serious consequences as do criminal punishments for adults. This measure comes again to protect the minor for the consequences of his acts: even if it is proved that the minor had the discernment and understood the consequences of his actions/inactions, given its young age and the particularities already mentioned, the law stated that these consequences should not follow him on the criminal record and should not prevent him from exercising his civil rights. It is, again, a form of protection of the minor against the consequences that the crime he committed may have in his future.
Article 116 of the Romanian Criminal Code established that it is mandatory, during the course of the trial, if an educative measure is to be applied, for the Romanian authorities to file a report, called „evaluation report". This report is not made by the judge, the prosecutor, or the lawyer, but by a specialized civil servant from the probation service, that, in the evaluation, must indicate all the social, family and educative background of the minor and the particular elements that probably made the minor commit the crime. Another important part of the report consists in the proposal that the probation officer must make regarding the educative measure that should be applied, together with the educative and social programs that the minor should follow, and other obligations that the court should impose to the minor. This report is mandatory and its role is to help the judge in its process of evaluating all the circumstances of the case and to establish the proper educative measure. However, the judge can apply a different measure than the one proposed by the probation officer. This provision comes as an expression of the modern concept that when dealing with a minor offender, knowing the personality and the general background of the offender is of high importance for establishing a proper sanction that would help the minor the most in understating the consequences of his conduct and in teaching him to respect the rules of the society he lives in.
In the present days, the educative measures and divided into two main categories: the non-privative measures and the privative measures, and in the following lines, we will discuss them briefly. As a general perspective, it must be said that the non-privative educative measures have in the center the education and try to teach the minor the consequences of his acts and the rules of conduct in the society. Their regulations part from the

supposition that the minor remains in the family, in his normal environment, but participates to some educational activities and programs that make him understand the consequences of his actions, why is it not desirable to commit crimes, and why and how should he act in the future. The privative educative measures put into center the protection of the minor, meaning that the minor must be taken outside his environment that made him commit the crime, and be reeducated in a more intensive manner, regarding the same aspects mentioned above. In the acse of privative educative measures, the state, therefore, assumes, for a limited period of time, of course, the protection role that traditionally belongs to the family, and creates a mainly isolated system where the minor is held, protected, and again, thought about the consequences of committing crimes and about the society rules[10] that he should follow.

Firstly, it must be underlined that the general rule imposed by the Romanian Criminal Code is always try to apply a non-privative educative measure. This is an expression of the fact the minor can still be taught better inside his normal environment, together with his family and friends. The non-privative measures must be executed inside the community, and during their execution the minor's connection to its family and its community, the free development of the minor, and its involvement in the educative programs, have all as a goal his formation of character in a spirit responsibility and respect for the civil rights and liberties (as it is stated in article 63 of Law nr. 253/2013).

A privative educative measure is an exception, and can only be applied if one of the following conditions exists: the offender committed another crime for which an educative measure was applied and the execution of that measure was started and completed or only started (meaning a special form of recidivism), or if the law foresees for the offence committed for the adult prison time for 7 or more years (rules stated by article 114 of the Romanian Criminal Code). So, if a minor offender is at its first offence and the offence is not very serious (the law states for that particular offence prison under 7 years), then only a non-privative educative measure will be applied.

In what regards the non-privative educative measures, these are regulated in a number of four: the obligation to follow a course of civic education, the supervision, the „stay at home on weekends", and the daily assistance.

The obligation to follow a course of civil education is a novelty if the Romanian legislation, regulated by article 117 of the Romanian Criminal Code. It is considered as the "softest" educative measure and, if the juvenile

[10] Lavinia Valeria Lefterache, *Drept penal. Partea generală*, editura Hamangiu, București, 2016, p. 492.

criminal is convicted to it, it supposes that he has the obligation to follow an educative program organized by the probation institutions with the duration of at most four months. The educative program has as a goal to help understand the minor the legal and social consequences he is exposing himself into in the case that he will commit other crimes. The course must also have as a goal to make the minor understand its responsibility regarding its future behavior.

The surveillance is the following non-privative educational measure regulated by article 118 of the Romanian Criminal Code. A similar measure also existed in the Romanian legislation before 2014. It is the second most soft measure, and during its execution, the minor must participate in several educative and social reintegration programs that will be indicated by the probation officer. It is of a duration between two and six months, and its surveillance, contrary to the expected, is made by the parents of the minor or by another significant adult in his life. The probation officer must supervise the manner in which the parent has exercised the surveillance.

The third non-privative educative measure is the „stay at home on weekends", a novelty in the Romanian legislation (it is of Spanish inspiration). Although in the category of the non-privative measures, this measure actually implies that the minor must stay at home and to not leave his home during the weekends, thus being a restrictive measure (from the perspective of the liberty of movement of the person). It can be imposed for a period between four and twelve weeks and it consists in the obligation of the minor to say inside his home in the days of Saturday and Sunday. As the days are expressly mentioned by the law, they cannot be changed to other week days. It begins on the 00.00 on of Saturday and it expires from at 24:00 Sunday. The role of this measure is to modify the conduct of the minor by restricting its liberty of movement, but also this measure implies the participation of the minor to educative and social programs.

Article 120 regulates the last and most severe non-privative educative measure, called daily assistance. It is a new measure, that did not exist in the Romanian legislation until 2014, and it is of Spanish inspiration. It must have a duration between three and six months. It implies that the minor must respect a strict daily program that is established by the probation officer. However, the program must be made in order to respect the minor s daily scholar activities or any other permitted activities that are beneficial for the minor. The probation officer will control if the minor will respect the program.

Along with one of measures, the court may choose to impose to the minor one or more of the following duties: to follow courses for training, not to

leave a certain territorial limit established by the court without the probation officer's approval, to not go at certain places, certain sports manifestation, other cultural activities or any other places established by the court, to not get close to the victim or its family members and to not try to make contact to them in any way, to be at the probation officer at the dates established by this one, to accept the medical or treatment measures imposed by the court, to attend, alone, of, if the case, with his parents to special psychological counseling programs, organized by the Romanian authorities. The probation officer must make sure that the minor respects the duties imposed by the court. If changes occur in the minor's life or schedule, the probation officer must notify the court that some of the duties are no longer necessary. At the same time, if the minor does not respect the duties imposed by the court, the probation officer must again notify the court which, in this case, can prolong the educative measure that was imposed on the minor until its maximum duration, or can apply a new educative measure, more severe.

It is important to mention that, if the minor does not respect the conditions of one of the non-privative educative measures, the court can prolong the duration of the measure until the maximum time possible, or can apply another educative measure, more severe (according to article 123 of the Romanian Criminal Code). If the measure applied was the daily assistance on the maximum duration (6 months), the court can apply the private measure of internment in an educative center. These two situations will happen if the minor, with bad-intention, does not follow the programs, the rules or the obligations imposed by the court. If there is an event that prevents him from following the rules (such as a disease etc.), then the court cannot prolong or replace the measures (as he has not acted in bad-faith or with bad-intention). At the same time, it must be underlined that only the judge can replace a measure with another measure or prolong the duration of a measure, and, of course, only after hearing of the minor and all the things that he wants to state in his defense.

The privative educative measures are regulated in articles 124 and 125 of the Criminal Code are two: internment in an educative center and internment in a detention center. The educative center is the specialized institution that has as a goal „the social recovery" of the admitted persons, in which those persons follow the social and educative programs and participate in activities that have as a goal the same „the social recovery". The activities must be educative, moral – religious, cultural, sportive, psychological, etc. Both types of centers must have specialized personnel to develop these activities and also medical personnel, security personnel, and administrative personnel. Internment in an educative center can be taken for a period from one up to three years, while internment in a

detention center can be taken for a period from two up to five years, or, exceptionally, in case of committing a very serious offence (for which the law states the life imprisonment or prison higher than 20 years for the person over 18) for a period of five to 15 years. The difference between the two types of centers is that in the detention center there is a permanent security line and permanent guards, and theoretically, the programs the minor follows are more intensive.

There are also provisions for good behavior: if, during the execution of the sentence, the minor has a good behavior, the internment measure can be replaced with the daily assistance, if the person is still under 18 years old, or it can be liberated from the execution of the sentence (measure similar with the conditional release from a prison sentence). This legislative option was taken given the fact that it is well known that immediately after being released from a privative measure, there is a higher risk that person will commit another crime. Therefore, by replacing one of the internment measures with the daily assistance or with conditional parole, the person is still under the surveillance of the state.

On the other hand, if the behavior of the minor in the detention center is not proper, if he does not respect the rules and influences other colleagues' recovery and development, only if the minor has turned 18, the court can decide that he will execute the rest of the sentence in an adult prison (according to article 126 of the Romanian Criminal Code). Although a similar measure also exists in the Spanish legislation, for instance, it can be argued that such a measure goes against the idea that in the center of the system the well development of the minor should be of most importance. Only if a person has turned 18, it is not necessarily to be that it has the mind of an adult and could respect prison rules and take the good lessons from an adult prison (rather than the not so beneficial ones). By a bad behavior or a behavior that could influence negatively other persons we could understand not – participating to educative and social programs and also determining others not to participate, owing or possessing guns or forbidden materials or substances, neglecting the daily program or lack of a respectful attitude regarding the persons he comes in contact to (as defined by article 182 and 82 of Law nr. 254/2013). As it can be seen, while some of these acts are clearly defined (such as „possessing a gun"), others are very vague and give enough space for interpretation (such as „lack of a respectful attitude"). In the end, if the judge decides to transfer the person in a prison for adults, this decision should take into account all the aspects involving the development of that person.

Conclusions

As it was showen in this article, juvenile crime is a complex phenomenon, that involves so mush more than criminal law. A young person who commits a crime has different reasons than an adult most of the times. At the same time, the sanctions that should be considered to be applied should be different, given that a young offender has other changed of regulating his conducts with the help of special programs. As it has been showed in the literature[11], we also consider that excellence in punishing juveniles are reflected in the application of diversion and educational measures aimed at minimal restrictions to achieve the best results. In this regard, it was argued, and we could not agree more, that the punishment of juvenile represents the ultimate means of applying re-social active treatment affects their re-education and training for life in freedom. Rather of being punitive, law enforcement agencies should take a reformative approach, based on educational programs. These programs must teach the juveniles to use their power and capabilities in a positive and helpful way in order to benefit society. Added to the main educational program, substance abuse education and treatment, family counseling, youth mentorship, parenting education, educational support, and youth sheltering are all examples of prevention program that should exist and be accessible.

The major issue regarding criminal liability of minors from the substantial point of view of criminal law is the age limit that must be drawn for attracting criminal responsibility: of course, no limitation is perfect, and there will always be one case-law that contradicts the general rule. But, apart from this, a general rule is beneficial not only because of the savings in money and judicial time the states make, but mostly because it saves most minors from a traumatic experience of being at trial, being investigated, etc. Thus, we believe that instituting an age limit for criminal liability with an absolute presumption of lack of discernment is a desirable provision that all countries should adopt. Regarding the age that this should be, it is, indeed, difficult to establish one. On the other hand, considering the evolvement of the society, of technology and in general of modern life, we consider that maybe 14 years old it is too much, and 13 years old would be a limit that is more aligned with the Western standards of civilization.

In what regards the criminal law sanctions imposed to minors that are held liable, many discussions can be made, and of course the Romanian system

[11] MsM MKTHK B. AlTć, *Juvenile Sanctions In Comparative Criminal Law*, available online at www. academia.com, accessed at 04.10.2024.

is far from being perfect. However, it is, without argument, in the best interest of the minor to institute a system of educative measures specially designed for the minor, having in center educative and social programs that teach the juvenile criminal the consequences of his acts and what the rule of living in the society. It is in the best interest of the minor to have as a rule the application of a non – privative educative system of sanctions, and to apply mainly a non-privative educative measure, because, as years of privation of liberty have proved, especially in the case of minors, privation liberty and prison time does not have as an effect lowering the number of juvenile crimes (but rather the opposite). The application of a privative educative measure should be the exception, for serious crimes or repeated criminal behavior, and the duration should be established as law as possible, in order to serve, again, the educational interest of the minor. Different types of non-privative educative measures should be available, so that the judge could have a broad edge of appreciation in individualizing a criminal sanction for a juvenile offender. The state should have strained specialists such as psychologists, social workers, probation officers etc. that can supervise the evolution of the minor who follows the educative measure, that can design educational programs with different varieties for different types of juvenile offender considering all their particularities. The judge should have a possibility to imposed specific duties and obligations to the minor, that have the same goal the educate him and keep him outside the place where is was influenced in committing the crime. The judge should have the option to modify these duties if the minor proves a good behavior, or to impose dome more if it is that case, as it should have the option to prolong the duration of an educative measure, of to apply another, more severe, educative measure, in case of bad-behavior of the minor.

In the end, it can be underlined that the focus of the juvenile justice system is to rehabilitate the minor so that he or she can be a functioning and law-abiding adult. Juvenile judges often stress education and rehabilitative programs as being the most important part of the sanctions applicable to minors, and it can be said that responding to juvenile offending is a unique policy and practice challenge. While a substantial proportion of crime is perpetuated by juveniles, most juveniles will ‘grow out’ of offending and adopt law-abiding lifestyles as they mature. It can be said, however, that minors have a unique capacity to be rehabilitated, but this may probably require intensive and often expensive interventions by the juvenile justice system. It is a cost, however, that the justice system should pay without hesitation. The juvenile criminals are still part of the future of the country and, when designing and applying a justice system for the juvenile

criminals, we must not forget that we are actually designing the future or our society.

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