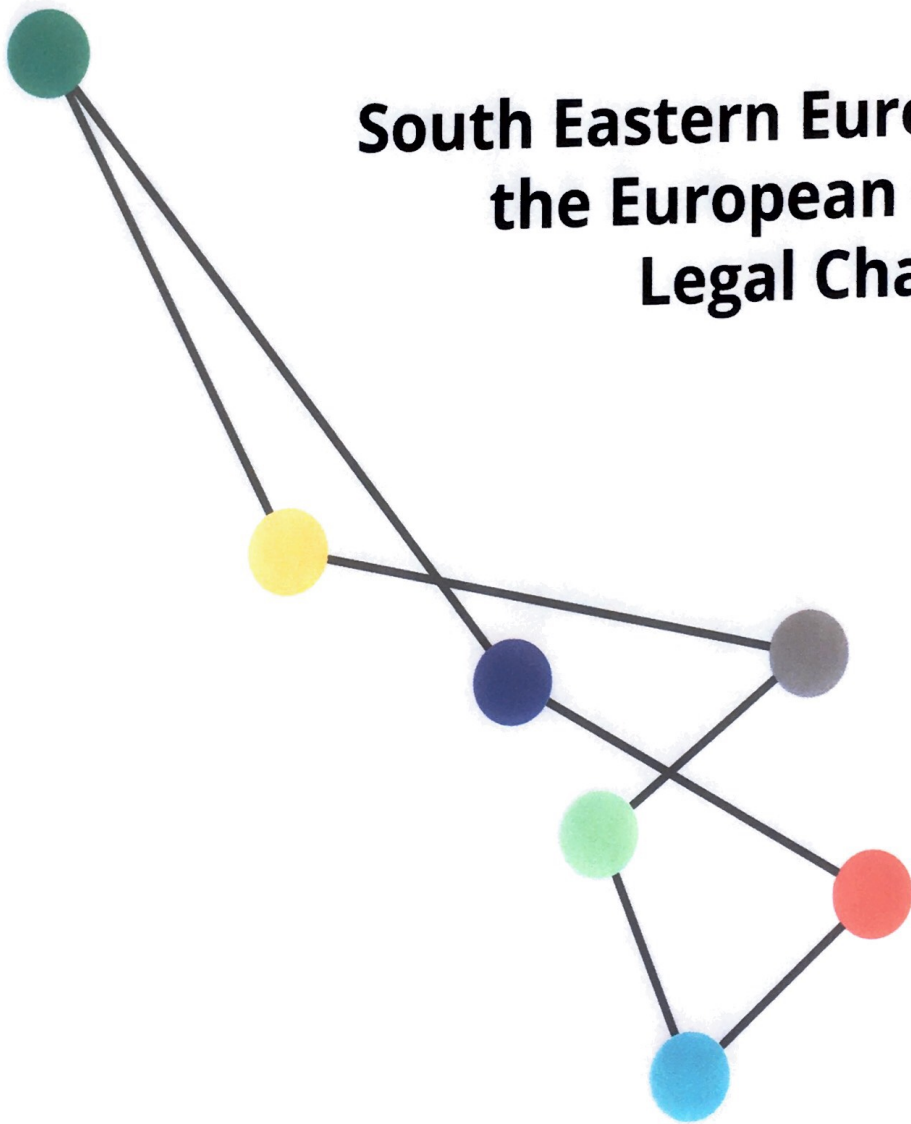


**SEE | EU Cluster of Excellence
in European and International Law (Ed.)**

South Eastern Europe and the European Union - Legal Challenges



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Preface

This publication is the fourth volume of the series of papers published within the SEE | EU Cluster of Excellence in European and International Law. The series is a compilation of articles from authors of different partner law faculties in Germany and South Eastern Europe.

The Europa-Institut of Saarland University is the leading partner of the SEE | EU Cluster of Excellence in European and International Law, together with the law faculties of the Universities of Belgrade (Serbia), Sarajevo (Bosnia and Herzegovina), Skopje (Macedonia), Tirana (Albania) and Zagreb (Croatia), and the South East European Law School Network. The project is supported and sponsored by the German Academic Exchange Service (DAAD) as well as the German Federal Ministry of Education and Research, and aims to promote the outstanding capabilities in research and teaching in the field of European and International Law.

The SEE | EU Cluster of Excellence in European and International Law sets to improve not only the cooperation between Germany and the South East European countries but also the cross-border regional and local cooperation in the areas of teaching and research as well as in the development of common structures and strategies. The Cluster of Excellence seeks to explore new avenues in the transfer of knowledge, as we firmly believe that sharing expertise and experiences will strengthen the profile of each partner and the network as a whole. To this end, the Cluster implements various measures and activities aspiring to achieve the set goals: eLearning modules, a model curriculum, a graduate school, a number of research projects, summer schools, library cooperation and various publications.

This collection of papers is purported to serve as a forum for academic staff and young academics of the partner faculties in the SEE | EU Cluster of Excellence to publish their research results on relevant questions in European and International Law. In addition to the traditional areas of law, specific areas of interest include: the integration of SEE countries in the European Union, issues of legal reform and implementation of the *acquis*, best practices in legal reform, and ap-

proximation of legislation in the region of South Eastern Europe and the EU. The series is published on a yearly basis and is peer-reviewed by the Editorial Board.

The SEE | EU Cluster of Excellence in European and International Law • Series of Papers 2018 encompasses six papers from academic staff and junior researchers from the law faculties in Rijeka, Saarbrücken, Skopje and Tirana. This issue covers a broad variety of topics and illustrates the wide range of subjects connected to European and International Law. Particular topics in this volume discuss various civil, criminal and human rights law issues from a European perspective, including harmonisation of anti-money laundering legislation, implementation of data protection law and challenges to fundamental rights in multireligious societies, to name a few.

We thank the German Academic Exchange Service (DAAD) and the German Federal Ministry for Education and Research for their financial support. We owe a special thanks to all authors for their contributions as well as to Ass. iur. Mareike Fröhlich LL.M., and Corina Vodă LL.M. who made this book possible.

We are confident that the SEE | EU Cluster of Excellence in European and International Law • Series of Papers will provoke greater interest in European and International Law and contribute to the achievement of the goals of the SEE | EU Cluster of Excellence in European and International Law.

Saarbrücken, December 2018

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Current Challenges in Conforming the Macedonian Penitentiary System to the European and the International Standards

Aleksandra Gruevska-Drakulevski*

"The degree of civilization in a society can be judged by entering its prisons."

Fyodor Dostoevsky
(*"The House of the Dead"*, 1862)

Abstract

In this paper, the author analyzes the characteristics of the Macedonian penitentiary system, the position of prisoners de jure and de facto, and the protection of the rights of prisoners.

The author concludes that the penitentiary system of Macedonia has the features of a modern system. It is one of the penitentiary systems that fully incorporates the Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules in the Law on Execution of Sanctions. However, the system shows weaknesses, especially where objective conditions for the execution of sanctions in accordance with the principles of execution of sanctions, especially imprisonment, have not been created.

The author of the article concludes that the penitentiary system in Macedonia has de jure characteristics of a modern system, but de facto faces serious challenges. In addition, the author discusses the question why prisoners, given the current state of the penitentiary system, do not request judicial protection of their rights. Additionally, the author emphasizes the need for systematic research on the protection of prisoners' rights resorting to legal means, such as, legal advice and the right to appeal to international bodies.

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A. Introduction

The Republic of Macedonia, as a candidate country for EU membership, faces numerous challenges in the effective implementation of serious reforms in the legal, political and economic system. In this context, the penitentiary system is also an important segment.

The penitentiary system in the Republic of Macedonia is defined by the Law on Execution of Sanctions¹ (LES) adopted in 2006. In 2010, given Macedonia's intention to harmonize its legislation with that of the European Union, LES was considerably amended. In 2013, 2014, 2015 and 2016, six more changes were made to the LES. Within a short period, LES was progressively amended and a new Law on Execution of Sanctions was drafted, which points to the dynamic nature of the issues regulated under this Law.

By affirming the concept of human rights and freedoms as the highest value in a modern civil society, numerous documents have been adopted guaranteeing the rights of humans, including the prisoners.²

On an international level, the rights of prisoners are guaranteed by the Nelson Mandela Rules - Revised Standard Minimum Rules for the Treatment of Prisoners (NMP-SMRTP)³. At the Council of Europe level, the central document is represented by the European Prison Rules (EPR).⁴ Penitentiary issues have been dealt with in other instruments of the Council of Europe, most notably: the conventions, the recommenda-

¹ Law on Execution of Sanctions, Official Gazette of the Republic of Macedonia, 2016, No. 2/2006; 57/2010; 170/2013, 43/2014, 166/2014, 33/2015, 98/2015 and 11/2016.

² UN General Assembly, Universal Declaration of Human Rights, 217A (III), 10/12/1948; UN General Assembly, International Covenant on Civil and Political Rights, 2200A (XXI), 23/3/1976; UN General Assembly, Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 39/46, 10/12/1984; UN General Assembly, Code of Conduct for Law Enforcement Officials, 34/169, 17/12/1979.

³ UN General Assembly, United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), Resolution adopted by the General Assembly on 17 December 2015 [on the report of the Third Committee (A/70/490)] (17/4/2018); Standard Minimum Rules for the Treatment of Prisoners", adopted by the First United Nations Congress on the Prevention of Crime and the Treatment of Offenders, held at Geneva in 1955, and approved by the Economic and Social Council by its resolutions 663 C (XXIV) of 31 July 1957 and 2076 (LXII) of 13 May 1977.

⁴ Recommendation Rec (2006) 2 of the Committee of Ministers to member states on the European Prison Rules, 11/1/2006.

tions,⁵ the case law of the European Court of Human Rights and the standards of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

Ensuing from the above, this paper shall analyze the characteristics of the penitentiary system in the Republic of Macedonia, the problems that the penitentiary system faces, the position of prisoners *de jure* and *de facto* and the mechanisms for protecting the rights of prisoners.

B. Characteristics of the Penitentiary System in Macedonia and Mechanisms for Protection of the Rights of Prisoners

Upon examination of the principles of execution of sanctions for criminal acts and misdemeanors, especially the principles of execution of the sentence of imprisonment, it can be concluded that the penitentiary system of Macedonia has the characteristics of a modern system. It is one of the penitentiary systems that completely incorporates the Nelson Mandela Rules – Revised Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules in the Law on Execution of Sanctions. Through all the elements of organization, functioning and realization of the educational process, the penitentiary system aims to ensure humane treatment of prisoners, protection of their interests and integrity, approximation of the living conditions in the penitentiary institutions with the conditions for life at liberty, with a single goal - to achieve their re-socialization. This is, in fact, the principle of modern penology.⁶

Considering the general and the specific principles upon which the system of execution of sanctions is based, it is clear that this is a dynamic system that is constantly evolving and changing in correlation with the

⁵ Important Recommendations of Council of Europe: No. R (89) 12 on education in prison, 13/10/1989; No. R (93) 6 concerning prison and criminological aspects of the control of transmissible diseases including Aids and related health problems in prison, 18/10/1993; No. R (97) 12 on staff concerned with the implementation of sanctions and measures, 10/9/1997; No. R (98) 7 concerning the ethical and organisational aspects of health care in prison, 8/4/1998; No. R (99) 22 concerning prison overcrowding and prison population inflation, 30/9/1999; Rec (2003) 22 on conditional release (parole), 24/9/2003; Rec (2003) 23 on the management by prison administrations of life sentence and other long-term prisoners, 9/10/2003.

⁶ *Arnaudovski/Gruevska-Drakulevski*, Law on Execution of Sanctions: integral text with preface, short explanations and a register of terms with appendixes, 2011, p. 23.

effects of the re-socialization of convicts. The system shows however weaknesses, especially there where objective conditions for the execution of sanctions in accordance with the foregoing principles have not been created. This is one of the reasons why the system for the execution of sanctions requires constant supervision by competent authorities.

Across the world, it has been confirmed that national enforcement authorities generally violate the freedom and rights of their citizens. The Law on Execution of Sanctions aims to protect Macedonian citizens and legal entities from excessive, unlawful, inhuman, irrational and unnecessary application of force by state organs, as well as from abuse of power by the authorities. The provisions of the LES stipulate, *"The persons, against whom sanctions are being applied, shall be treated humanely, by respecting their personality and dignity, preserving their physical and mental health, considering the achievement of the goals in specific sanctions"*.⁷ Furthermore, Article 38 provides that *"During the execution of the imprisonment sentence, the psycho-physical and moral integrity of the convicted person must be protected, and his/her personality and dignity must be respected. Any kind of torture, inhuman or degrading treatment and punishment is prohibited. The right to personal security of the convicted person and the respect of his/her personality must be insured"*. In this manner, the Law provides for the protection and realization of the guaranteed rights and freedoms of the convicted persons. It further stipulates that the rules on the execution of sanctions shall be applied impartially. Discrimination on the grounds of race, color of skin, sex, language, religion, political or other beliefs, national or social origin, property and social status or some other status of the person against whom the sanctions are applied, is prohibited. The religion, personal convictions and moral norms of the person against whom sanctions are applied have to be respected.⁸ Furthermore, *"[...] the persons, against whom the sanctions are being applied, shall be treated in a manner which, to the extent possible, corresponds to their personality. The persons, against whom sanctions are being applied, shall be treated humanely, by respecting their personality and dignity, preserving their physical and mental health, considering the achievement of the goals in specific sanctions"*.⁹

⁷ Article 6 LES.

⁸ Article 4 LES.

⁹ Article 5 LES.

The complexity and the complementarity of the Law on Execution of Sanctions are expressed through the many bodies involved in the execution of sanctions. The execution of sanctions includes several forms of supervision of the activity of the institutions involved. The basic form of supervision is an aspect of the principle of legality - legal execution of the judgments. The following form of supervision is in relation to the principle of legitimacy of the execution of sanctions provided by law. These forms of supervision and control provided for in the Law on Execution of Sanctions are designated as judicial supervision in the execution of sanctions and are entrusted to the Judge for Execution of Sanctions.¹⁰

Another form of supervision and control is the expert-instructor supervision in the execution of the sanctions, which is entrusted to the Directorate for Execution of Sanctions (DES) as a body within the Ministry of Justice.¹¹ In case of irregularities, the Director of the DES is empowered to issue an order for their removal.

The Law on Execution of Sanctions also provides supervision of the execution of sanctions by the State Commission for Supervision established by the Government.¹² The State Commission has the task to conduct occasional visits to the institutions to review the situation regarding the application of the law and other regulations and rules on the execution of sanctions, the treatment of convicted persons, the conditions in which they live and work and conduct a survey on the position and the rights of the prisoners. Based on its findings, the State Commission shall prepare a report with appropriate proposals and measures addressing the irregularities and establish a deadline for their removal. The State Commission shall submit this report to the Government, the bodies and the court competent for the execution of sanctions.¹³ Despite it looking good on paper, this Commission is unfortunately not functional in practice.¹⁴

¹⁰ Article 78-81 LES.

¹¹ Article 77 LES.

¹² Article 82 LES.

¹³ *Ibid.*

¹⁴ Considering the non-functioning of the State Commission for Supervision, in the proposal for amendments of the new LES, its existence is not foreseen.

Preventive visits by the Committee of the Council of Europe for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT)¹⁵ and the National Preventive Mechanism (NPM)¹⁶ of the Ombudsman are of no lesser importance for the protection of the rights of convicts.

The CPT organizes visits to places of detention, in order to assess how persons deprived of their liberty are treated. These places include prisons, juvenile detention centers, police stations, holding centers for immigration detainees, psychiatric hospitals, social care homes, etc.¹⁷

CPT delegations have unlimited access to places of detention, and the right to move inside such places without restriction. They interview persons deprived of their liberty in private and communicate freely with anyone who can provide information. After each visit, the CPT sends a detailed report to the State concerned. This report includes the CPT's findings and its recommendations, comments and requests for information. The CPT also requests a detailed response to the issues raised in its report.¹⁸

The National Preventive Mechanism (NPM),¹⁹ according to the Optional Protocol to the Convention against Torture and Other Cruel, In-

¹⁵ <http://www.cpt.coe.int/en/> (20/11/2018).

¹⁶ http://www.ombudsman.mk/mk/nacionalen_preventiven_mehanizam.aspx (20/11/2018).

¹⁷ <http://www.cpt.coe.int/en/about.htm> (20/11/2018).

¹⁸ <http://www.cpt.coe.int/en/about.htm> (20/11/2018).

¹⁹ The Republic of Macedonia signed the Optional Protocol to the Convention against Torture on 1 September 2006, while the Parliament of the Republic of Macedonia ratified the same protocol on 30/12/2008, thus appointing the Ombudsman to act as National Preventive Mechanism (NPM) in the Republic of Macedonia the main task is the prevention of torture and other cruel, inhuman and degrading treatment or punishment. The National Preventive Mechanism in the Republic of Macedonia draws its mandate and competences from the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the Law on the Ombudsman, and has also prepared a separate Rulebook on the manner of prevention and methodology for the manner of conducting preventive visits. The National Preventive Mechanism implements its activities in accordance with the Annual Work Program approved by the Ombudsman.

human or Degrading Treatment or Punishment²⁰, is a national body that regularly reviews the treatment of persons deprived of their liberty in order to strengthen, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment.²¹

C. The Position of Prisoners

The position of prisoners while serving their prison sentence can be assessed through their defined rights, duties and disciplinary responsibilities. Modern penitentiary systems, including Macedonia's, guarantee rights to prisoners that must not be violated and determine obligations whose fulfillment does not degrade their personality.

In practice, there is a discrepancy between the positions of prisoners *de jure* and *de facto*.

I. The Position of Prisoners De Jure

When someone is deprived of their liberty, probably one does not speak of the "rights", but of the "legal status" of the convicted person that should be guaranteed. In a separate chapter titled "The position of the convicted persons" spanning twenty-one sections, the Law on Execution of Sanctions regulates the issues of classification of prisoners, accommodation, clothing and bedding, personal hygiene, food, rest, work, pension insurance, health care, education, entertainment, sport and recreation for prisoners, educational work with prisoners, religious needs, contact with the outside world through correspondence, telephoning, visits and receiving packages, marriage of convicts, privileges, displacement of prisoners (progression, re-progression and relocation of prisoners), termination of serving the sentence, relation of the officials with the prisoners, protection of the prisoners by using legal means for protection (legal advice and legal means of the prisoners, appeal of the prisoners to international bodies and organs) and protection of the

²⁰ Optional Protocol of the UN General Assembly to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Resolution A/RES/57/199, in force as of 22/6/2006, available at: <http://www.ohchr.org/en/ProfessionalInterest/Pages/OPCAT.aspx> (20/11/2018).

²¹ http://www.ombudsman.mk/mk/nacionalen_preventiven_mehanizam/npm_vo_rm.aspx (20/11/2018).

rights of collaborators of justice,²² disciplinary responsibility of the prisoners and material liability of the prisoners.²³ This is one of the most important chapters of the Law, because it provides means and methods that will ensure the treatment of prisoners in order to achieve their re-socialization as the main purpose of the execution of the sentence of imprisonment. In this chapter, the provisions that give the convict access to legal means for the protection of their rights are of particular importance. These provisions essentially alter the relationship between employees (the formal system in the institution) and prisoners, and relationships are created in which they appear as equal sides.

As mentioned previously in this paper, these provisions of the LES fully incorporate the standards for treatment of prisoners provided by the Nelson Mandela Rules, the revised Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules.

II. The Position of Prisoners De Facto

The position of prisoners in the Republic of Macedonia *de facto* differs greatly from what is provided in the international documents and the national regulations.

Several reports contain information on the country's penitentiary system, such as the reports of the CPT, the annual reports of the NPM and the annual reports of the DES.

After their last visit, the CPT published a highly critical report on the prisons in the Republic of Macedonia.²⁴ In a report published on October 12, 2017 regarding a visit in December 2016, the CPT criticized the conditions of imprisonment and treatment of prisoners in Idrizovo Peniten-

²² Article 101-175 LES.

²³ Article 176-185 LES.

²⁴ Council of Europe, CPT/Inf (2017) 30, Report to the Government of "the former Yugoslav Republic of Macedonia" on the visit to "the former Yugoslav Republic of Macedonia" carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 6 to 9 December 2016 of 12/10/2017, available at: <https://rm.coe.int/pdf/168075d656> (1/7/2018).

tiary, in which about 60% of the prisoners in the country serve their prison sentence.²⁵

The Report recalls that since 2006, the CPT has on several occasions highlighted some basic structural issues, such as “[...] *lack of policy on how to manage complex institutions, an inadequate system of reporting and supervision, and the poor management and performance of staff*”.²⁶ The findings of the visit in December 2016 show little progress has been made to address these issues. Also, in the Idrizovo Penitentiary, “[...] *the provision of health care remains completely inadequate and the places where prisoners live at risk; the absence of appropriate treatment means that prisoners have nothing to do constructively; and conditions for imprisonment in several parts of the prison can be considered inhuman*”.²⁷

The problem of corruption in Idrizovo Penitentiary is particularly emphasized. The CPT found that “[...] *at Idrizovo Penitentiary, every aspect of imprisonment is up for sale, from obtaining a place in a decent cell, to home leave, to medication, to mobile phones and drugs*”.²⁸

The report further states that “[...] *ill-treatment, inter-prisoner violence, corruption and a lack of activities offered to prisoners at Idrizovo Penitentiary are intrinsically linked to the insufficient number of prison staff and the lack of training and support provided to them*”.²⁹

Regarding the detention unit at Skopje Prison, the CPT qualifies the regime offered to the detainees as a relic of a repressive past. Detainees are locked in their cells for 23 hours a day for up to two years, and they are offered no activities except for reading, playing cards and listening to the radio. Material conditions are again criticized.³⁰

Although the situation in the closed part of Stip Penitentiary is not as bad as in the Idrizovo Penitentiary, the report recommends, inter alia,

²⁵ <https://www.coe.int/en/web/cpt/-/cpt-publishes-highly-critical-report-on-prisons-in-the-former-yugoslav-republic-of-macedonia-?desktop=true> (1/7/2018).

²⁶ *Ibid.*, p. 6.

²⁷ *Ibid.*, pp. 12-17.

²⁸ *Ibid.*, p. 5.

²⁹ *Ibid.*, p. 10.

³⁰ *Ibid.*, p. 15.

reducing the extreme overcrowding in certain cells, improving the material conditions and offering activities to prisoners.³¹

The CPT completes the report stating “[...] time has come for the rule of law and protection of human rights to be applied fully in the prison system and for “the former Yugoslav Republic of Macedonia” to abide by its international obligations to cooperate with the CPT”.³²

The CPT for 2019 has announced a visit in order to investigate the treatment of persons deprived of their liberty in the Republic of Macedonia.³³

D. Key Problems of the Penitentiary System in the Republic of Macedonia

The key problems that the penitentiary system in the Republic of Macedonia is facing are: overcrowding in penitentiary institutions; a lack of prison staff; a high rate of recidivism; the problem of “vulnerable categories” of prisoners in the penitentiary institution; inadequate conditions; inadequate health care of prisoners; inadequate treatment of prisoners in order to achieve the re-socialization process; ill-treatment and corruption.

Below, this paper will give a brief review of the current problems of the penitentiary system, which consequently violates the rights of prisoners guaranteed by international and national documents.

I. Prison Overcrowding

The penitentiary system in the Republic of Macedonia faces a serious problem of overcrowding in the penitentiary institutions. It is estimated that there are almost twice as many prisoners as the institutions' capacity allows. For years, almost all the penitentiaries have faced the problem of overcrowding. The total number of prisoners has constantly been exceeding 3000 at a total maximum capacity of the prison system of 2026. This means that there are 1.5 prisoners for each bed. At Idrizovo

³¹ *Ibid.*

³² *Ibid.*, p. 23.

³³ <https://www.coe.int/en/web/cpt/-/council-of-europe-anti-torture-committee-announces-visits-to-eight-states-in-2019> (1/7/2018).

Penitentiary, for instance, the situation has been most dramatic. The facility has a capacity of 700-800 prisoners (some adaptations of the premises made contrary to the CPT standards have increased the capacity to 1,094 places) although nearly 2,000 prisoners have been accommodated there for years in a row. The same situation is found in other prisons.

After the adoption of the Law on Amnesty in 2017 and the release of 815 people from detention, the issue of accommodation shortage has become less pressing. Nonetheless, overcrowding is still evident in Idrizovo Penitentiary, Stip Penitentiary and Tetovo Prison (see Table 1). It must be noted that this 'resolution' of the problem of overcrowding is only temporary. This conclusion is supported by the data on judicial penal policy (according to which, prison sentences are still the most predominant ones), as well as by the high rate of recidivism. Illustrating the latter, after only four hours of being released from prison in accordance with the Law on Amnesty of 2007 an individual committed a new crime.³⁴ Experience from previous amnesty laws shows that a high percentage of persons given amnesty reoffend.

Penitentiary	Capacity: unit/institution	Total number: prisoners	%
Skopje Prison	128	65	50,8
Tetovo Prison	48	64	133,3
Bitola Prison	60	43	71,7
Prilep Prison	85	59	69,4
Gevgelija Prison	43	36	83,7
Kumanovo Prison	178	54	30,3
Ohrid Prison	35	8	22,9
Strumica Prison	62	53	85,5
Idrizovo Penitentiary	1094	1223	111,8
Stip Penitentiary	210	253	120,5
Open section in Kriva Palanka	23	5	21,7
Struga Penitentiary	60	22	36,7
Total	2026	1885	93,0
Tetovo Correction Penitentiary	/	22	/

Capacity and current number of convicted persons in penitentiary institutions (20.3.2018)

Source: Directorate for Execution of Sanctions

³⁴ [https://infomax.mk/wp/рекордни-четири-часа-на-слобода-амнес/\(1/7/2018\)](https://infomax.mk/wp/рекордни-четири-часа-на-слобода-амнес/(1/7/2018)).

The problem of overcrowding violates the right of prisoners to a minimum living space (4m²/9m³) that further generates other problems (failure, due to the lack of staff and other pressures, to carry out the re-socialization process) resulting in increased recidivism.

Unfortunately, there is a trend of continuous growth of the prison population, which worsens the problem of overcrowding in the penitentiary institutions.³⁵ In such a situation, efforts are being made to build new prisons to provide new (expensive) prison places, which are likely to be filled quickly (and will be overcrowded) in a relatively short period, and this will not be beneficial for improving security in the community. Hence, a revised penal policy is needed to reduce the number (or at least to stop the growth) of the prison population.

Recommendation No. R (99) 22 of the Committee of Ministers to Member States on prison overcrowding and the increase in the prison population and Recommendation Rec (92) 17 on consistency in sentencing should also be taken into account. A series of other international documents also apply to this issue.³⁶

One of the possible solutions to reduce prison overcrowding is the frequent use of alternative sanctions and measures. As a first step,

³⁵ See the Annual Reports of the Directorate for Execution of Sanctions on the Condition and Operation of Penitentiaries in the Republic of Macedonia for 2008-2017, available at: <http://www.pravda.gov.mk/tekstoviuis.asp?lang=mak&id=godizv> (1/9/2018).

³⁶ European Convention on the Supervision of Conditionally Condemned or Conditionally Discharged Persons, ETS no. 51, 30/11/1964; Recommendation CM / Rec (2010)1 of the Committee of Ministers to member states on the Council of Europe on the probation rules, 20/1/2010; Recommendation Rec (2003) 22 of the Committee of Ministers to member states on conditional release (parole), 24/9/2003; Recommendation Rec (2000) 22 of the Committee of Ministers to member states on the promotion of the application of the European rules on sanctions and measures applied in the community, 29/11/2000; Recommendation No. R (99) 19 to the Committee of Ministers to member states concerning mediation in penal matters, 15/9/1999; Recommendation No. R (92) 16 of the Committee of Ministers to member States on the European rules on sanctions and measures applicable in the community, 19/10/1992; Recommendation Rec (79) 14 of the Committee of Ministers to member states concerning the application of the European Convention for the Supervision of Conditionally Condemned or Conditionally Discharged Persons, 14/7/1979; Resolution (70) 1 (adopted by the Ministers` Deputies) on the practical organization of the surveillance measures and the subsequent care of convicted or conditionally discharged persons, 26/1/1970.

judges should be encouraged to impose alternative measures provided in the Criminal Code,³⁷ but also to convince the wider public that such measures do not question the system of criminal justice, on the contrary, they hold a greater benefit than imprisonment.³⁸

Another solution is the frequent application of conditional release (parole). In the Recommendation Rec (2003) 22 on conditional release, the Committee of Ministers of the Council of Europe points out that “[...] conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community”.³⁹ The domestic criminal practice faces weaknesses of the conditional release system, which has been proven empirically. From the data on the use of conditional release in Macedonian penitentiary practice, it can be concluded that it is very rarely used, and even in cases when the appeal for release on parole is accepted, it is usually granted to prisoners sentenced to short sentences, and is approved for a period of up to 3 months prior to release.⁴⁰ The conclusion is that the main goal of conditional release is not achieved, which is to motivate prisoners to actively engage in their own re-socialization process, to encourage their good behavior and to actively participate in work engagement in the institution. In the future amendments to the LES, the procedural safeguards of the Recommendation should be implemented that will strengthen the position of the convicted person when seeking parole. Hence, *“Recognizing that conditional release is one of the most effective and constructive means of preventing reoffending and promoting resettlement, providing the prisoner with planned, assisted and supervised reintegration into the community [...]; Considering that the financial cost of imprisonment places a severe burden on society and that research has shown that detention often*

³⁷ See Article 48-59-a Criminal Code, Official Gazette of the Republic of Macedonia, No. 37/1996, 80/1999, 4/2002, 43/2003, 19/2004, 81/2005, 60/2006, 73/2006, 7/2008, 139/2008, 114/2009, 51/2011, 135/2011, 185/2011, 142/2012, 166/2012, 55/2013, 82/2013, 14/2014, 27/2014, 28/2014, 41/2014, 115/2014 and 132/2014.

³⁸ See *Buzarovska*, Alternatives to Imprisonment, 2003, p. 48 and *Gruevska-Drakulevski*, The Impact of Imprisonment on Recidivism, 2010, p. 294.

³⁹ See *Gruevska-Drakulevski*, Conditional Release (Parole) in the System of Execution of Sanctions in the Republic of Macedonia: Is it in Accordance with the Recommendation Rec (2003) 22 on Conditional Release (Parole), *Iustinianus Primus Law Review* 2012, p. 3.

⁴⁰ *Arnaudovski/Gruevska-Drakulevski*, Penology (first and second part), 2013, p. 238.

has adverse effects and fails to rehabilitate offenders [...]”,⁴¹ judges should be more prone to approve requests for conditional release when the conditions are met.

Furthermore, a possible solution to the problem of overcrowding would be the establishment of a Probation Service. Probably the most effective way to reduce the size of the prison population is to introduce a well-equipped Probation Service, which will provide support for the prison system and alternative measures in which the courts and the wider public will have confidence. The Directorate for Execution of Sanctions has already prepared a comprehensive Strategy for establishing the Probation Service and funds have already been allocated for its establishment.⁴² According to the last short report on the work of the DES, “[...] the probation service is being established gradually, i.e., as a pilot project in April 2017, the probation office was first started on the territory of the Basic Court Skopje1 - Skopje within the DES. [...] and then it is planned to establish other local probation offices across the country in the area of the basic courts with extended competence in Bitola, Prilep, Ohrid, Gostivar, Tetovo, Kumanovo, Kocani, Veles, Strumica and Stip”.⁴³

II. Lack of Staff in Penitentiaries

The penitentiary system in the Republic of Macedonia also faces the problem of an insufficient number of prison staff in proportion to the number of prisoners. Almost 70% of the employees work in the Security Sector (Prison Police). The second and the third categories of employees are in administration and finance (13%) and in the sector for re-socialization (12.4%).⁴⁴ The CPT repeatedly underlines the problem of insufficient number of prison staff. In the latest report, the CPT states: *“Ensuring a positive climate requires a professional team of staff, who must be present in adequate numbers at any given time in detention areas and in*

⁴¹ See Preamble of Recommendation Rec (2003) 22 of the Committee of Ministers to member states on conditional release (parole), 24/9/2003.

⁴² <http://www.pravda.gov.mk/tekstoviuis.asp?lang=mak&id=uisstrat> (2/7/2018).

⁴³ http://www.pravda.gov.mk/Upload/Editor_Upload//izvestaj0108_2012_2017.pdf (2/7/2018).

⁴⁴ See Annual Reports of the Directorate for Execution of Sanctions on the Condition and Operation of the Penitentiaries in the Republic of Macedonia for 2008-2017, available at: <http://www.pravda.gov.mk/tekstoviuis.asp?lang=mak&id=godizv> (1/9/2018).

*facilities used by prisoners for activities. An overall low staff complement, which diminishes the possibilities of direct contact with prisoners, will certainly impede the development of positive relations; more generally, it will hinder any efforts to maintain effective control and will generate an insecure environment for both staff and prisoners. Furthermore, low staffing levels make it nearly impossible to provide an acceptable regime for prisoners".*⁴⁵

At Skopje Prison, the number of prison officers remained the same as had been observed during the October 2014 visit (i.e. 110). "Nevertheless, steps should be taken to ensure that at least one female prison officer is on duty at all times in the detention area which was not the case at the time of the visit."⁴⁶ In Stip Penitentiary, there are only 64 members of prison staff for a prison population of 359 people. Hence, the CPT recommends increasing the number of prison officers in Stip Prison. In Idrizovo Penitentiary, the CPT reiterates that issues such as harassment, violence among prisoners, corruption and lack of activities offered to prisoners are essentially related to the insufficient number of prison staff and the lack of training and support for them. All prison staff should be provided with appropriate training. The situation regarding "educators" at Idrizovo remains the same as that observed at the time of the 2014 visit. Many prisoners complained that they hardly ever saw their educator and a considerable number of inmates alleged that educators usually sought a reward whenever they were asked to make a recommendation about home leave or another prison-related matter. Similar complaints were received at Stip Prison concerning the educators.⁴⁷ The CPT reiterates the importance of having a sufficient number of suitably qualified tutors adequately supervised by the management. Furthermore, there is a need to increase the number of educators who speak Albanian and employ at least one Roma educator.

The NPM have confirmed these considerations as well. For example, in the special report of the NPM for the visit of the Idrizovo Penitentiary from March 2017, it was stated that "According to the Rulebook on the systematization of work places in the Idrizovo Penitentiary with an open department in Veles, the projected number of employees in this institution is 430, however from the conversation with the director, as well as from the

⁴⁵ Council of Europe, (fn. 25).

⁴⁶ *Ibid.*

⁴⁷ *Ibid.*

insight in the table overview of the jobs, it follows that the actual number of filled positions is 272".⁴⁸

The next problem is the lack of properly trained (competent and professional) personnel at different levels in the system. Studies show a very low level of training among the prison staff.⁴⁹ It is extremely important to provide opportunities and resources for continuous training.

The CPT advocates a professional management career within the prison system, and the hierarchical relationship between prison directors and the Director of DES should be clearly defined.

III. The Problem of High Recidivism Rates

The rate of recidivism is high. Analysis shows that over 53% of prisoners are recidivists, which only confirms the hypothesis that prisons are "schools of crime".⁵⁰

Of particular concern is the high rate of drug addicts among the prison population, which has seen rapid growth in recent years.⁵¹ Therefore,

⁴⁸ Ombudsman "Special report on the visit to the Idrizovo Penitentiary - Skopje, March 2018, available at: <http://ombudsman.mk/upload/documents/2017/1/Posebno-izvestaj-Idrizovo-2016.pdf> (2/7/2018).

⁴⁹ Analysis of the results of the examination of the knowledge of the employees in the penitentiary and correctional institutions, Directorate for Execution of Sanctions, Skopje, 2011, available at: <http://www.pravda.gov.mk/UIS/ANALIZA%20NA%20REZULTATITE%20OD%20PROVERKA%20NA%20ZNAENJATA%20NA%20VRABOTENITE%20OVO%20KPU%20I%20VPU.pdf> (1/7/2018).

⁵⁰ *Gruevska-Drakulevski*, The Impact of Imprisonment on Recidivism, 2010, p. 144.

⁵¹ It should be emphasized that according to the data from the Ministry of Justice in the penitentiary institutions in the country, the number of prisoners who are drug addicts is worrying. Namely, in the period 2000-2004, 260-410 people were drug users (mostly heroin) every year. In 2008, 649 prisoners were addicted to drugs (31% of 2101 prisoners). In 2009, there were 516 prisoners of drug addicts (23.3% of the total number of 2215 prisoners). In 2012 there were 1,148 prisoners - drug addicts who requested 3,055 health check-ups. Most striking is the situation in the Idrizovo Penitentiary where most of the prisoners are drug addicts. Thus, in 2006, 197 addicts were detected; in 2007 - 209 and in 2008 - 466 addicts (36.8% of the total number of 1268 prisoners in Idrizovo). In the department for addicts and chronically ill prisoners, there were 66 prisoners, of which 37 were addicted under methadone therapy, and 29 elderly prisoners remained in the geriatric unit. And in 2009, the largest number of drug addicts were registered in Idrizovo with 386 registered drug addicts (29.6% of the total number of 1,304 prisoners). In Bitola Prison, 48 prisoners (43.2% of the total number of 111 prisoners on

consideration should be given to opening specialized penitentiary facilities for drug addicts. First, they will be provided with appropriate treatment, and secondly, they will be protected from further criminal infection.

Some prisoners who are addicted to drugs also have mental health problems and require appropriate treatment.⁵² Therefore, it is necessary to establish a specialized penitentiary institution for people with addictions to alcohol, drugs and other psychotropic substances, especially since drug or alcohol addiction is a strong prognostic factor for future recidivism. In specialized institutions for prisoners with mental disorders, these categories of prisoners should receive appropriate treatment.

From the above analysis, one can notice a violation of the right of this category of prisoners to appropriate treatment for addictions and mental disorders.

IV. The Problem of “Vulnerable Categories” of Prisoners

The penitentiary system faces the problem of prisoners who become vulnerable because of their minority status and different cultural characteristics. The 2012 NPM Annual Report shows that 44% of prisoners were Macedonians, 32% Albanians, 15% Roma, 4% Turks, 2% Serbs and 3% others. One of the minority groups (Roma) is subjected to greater marginalization and discrimination than other prisoners, although this appears to be due to their different cultural characteristics rather than to their minority status. The 2012 NPM report commented on this issue in detail and called on the authorities to implement the necessary safeguards.⁵³

31.12.2009) were addicted to drugs. Furthermore, unofficial data indicate that 80% of prisoners are addicted to drugs. There are also many prisoners who have become addicted during serving the sentence of imprisonment. Currently, the Regional Methadone Centre has been set up at the Idrizovo Prison. It is also planned to establish a drug-free department, see *Arnaudovski/Gruevska-Drakulevski*, *Penology* (first and second part), 2013, p. 77.

⁵² In 2012 there were 399 prisoners with mental disorders who requested 1,497 medical examinations.

⁵³ Ombudsman, National Preventive Mechanism, Annual Report of the NPM for 2012, May 2013, available at: <http://www.ombudsman.mk/upload/NPMdokumenti/lzvestai/>

V. The Problem of Inadequate Conditions

In terms of accommodation of prisoners, the CPT and the NPM have concluded for years that the living conditions of prisoners, as well as detainees, are below the standards prescribed by national laws and international documents. It is necessary to undertake concrete measures and activities for the construction of new accommodation facilities that will meet national and international law standards.⁵⁴

At the time of the 2016 visit, insalubrious and severely overcrowded living conditions in an unsafe and unhygienic environment prevailed in many of the living quarters. Two days of intense cleaning prior to the delegation's visit made little difference. The conditions of detention in the un-renovated B Wing (notably Wings 2 and 5) of the closed section of the prison, most of the rooms in the "school", the admission unit and the "ambulanta" could certainly be described as inhuman and degrading treatment⁵⁵ taking into consideration the European Court of Human Rights' most authoritative judgment⁵⁶ to date on this matter.

*"The sanitary annexes to these areas were in a stunning state (filthy, foul-smelling, damaged and leaking), many of the showers did not work and there was hardly any provision of hot water. The heating was working for several hours a day. Not surprisingly, the delegation observed that many prisoners suffered from insect bites and infections such as scabies"*⁵⁷

But, *"In the midst of a sea of misery at Idrizovo Penitentiary, the CPT's delegation found a wing (No.9) with excellent conditions; cells of 11m² accommodating two persons, in a good state of repair with carpets on the floors and furnished with leather sofas and wooden framed beds, plasma screen TV sets, fridges, cooking appliances and individual air conditioning systems, all bought with the inmates' own funds. The common areas were pleasant with an aquarium, tables, chairs and sofas, a freezer and a gym with weights equipment and exercise bicycles. The contrast was striking.*

NPM%20Godisen%20izvestaj-2012.pdf (2/7/2018).

⁵⁴ See the Reports of NPM and CPT, available at: http://www.ombudsman.mk/mk/nacionalen_preventiven_mehanizam/izveshtai/godi_shni_izveshtai.aspx or <http://www.cpt.coe.int/en/states/mkd.htm> (2/7/2018).

⁵⁵ Council of Europe, (fn. 25).

⁵⁶ EctHR [GC], no. 7334/13, *Muršić v Croatia*, judgment of 20/10/2016.

⁵⁷ Council of Europe, (fn. 25), p. 12.

*Unfortunately, it was a flagrant manifestation of a corrupt system and showed clearly where the power within the prison lay”.*⁵⁸

In conclusion, hygiene, clothing, bedding and food for prisoners should not be a reason for their dissatisfaction with the system. There are standards, which must be met in this regard, as they will help the successful re-socialization of prisoners. This is especially true when it comes to food because the penal institutions have conditions for food production that will meet the needs of prisoners.⁵⁹

VI. Inadequate Health Care for Prisoners

The level of health care for prisoners in the country is below the level of what is required by the best practices and on many occasions, the CPT points out negative remarks. The current state of the health care system in penitentiary and correctional institutions shows a deficit in human and material resources. Namely, there is an insufficient number of employees (especially qualified medical personnel), but also inadequate conditions for accommodation of convicts who need treatment.⁶⁰ Another problem is the health insurance of prisoners, a right afforded to them under the LES,⁶¹ which, unfortunately, is not realized.

Consequently, the health policy in penitentiary institutions should be integrated and aligned to the national health policy. The prison health service should have a sufficient number of qualified medical, hospital and technical personnel, as well as appropriate premises, quality installations and equipment similar, if not the same to what is available for the community. The role of the Ministry of Health should be strengthened in the area of quality assessment of hygiene, health care and or-

⁵⁸ *Ibid.*, p. 13.

⁵⁹ *“The delegation once again was able to observe for itself both the meagre portions and the inadequacy of the diet, including no fresh fruit. For example, on one day of the visit, lunch was potato and chicken stew, except that the delegation observed that the portions being served out of large containers to the prisoners contained no chicken, only potato. Further, the manner in which the food was distributed had little regard to hygiene or to the dignity of prisoners.” Ibid.*, p. 14.

⁶⁰ See the Reports of the NPM and the CPT, available at: http://www.ombudsman.mk/mk/nacionalen_preventiven_mehanizam/izveshtai/godishni_izveshtai.aspx or <http://www.cpt.coe.int/en/states/mkd.htm> (2/7/2018).

⁶¹ Article 117 LES.

ganization of health services. A clear division of responsibilities and powers should be established between the Ministry of Health and other competent ministries, who should cooperate in the implementation of an integrated health policy in prisons. In addition, international documents in this area should be respected.⁶²

A step forward has been made in order to solve this problem by placing the responsibility for health services (including in the penitentiary system) under the Ministry of Health and a positive outcome from such a measure is expected. Otherwise, the challenges faced by healthcare workers in prisons are enormous, including lack of staff, the inadequate health check of newly admitted prisoners, inadequate dental and psychiatric care and poor practice of treating drug addiction.⁶³

⁶² Recommendation No. R (98) 7 of the Committee of Ministers to member states concerning ethical and organizational aspects of prison health care, 8/4/1998; Recommendation No. R (93) 6 of the Committee of Ministers to member states concerning prison and criminological aspects of the control of transmissible diseases, including AIDS and related health problems in prisons, 18/10/1993.

⁶³ *"The health care staffing team at Idrizovo Penitentiary consisted of two doctors (a general practitioner and a psychiatrist) and two nurses for a population of over 1,800 prisoners. This is totally inadequate and, consequently, the team was overwhelmed. The delegation received many complaints relating to access to health care which is scarcely surprising. Officially, inmates made a request to the director to see the doctor, which was filtered by the prison officers. Weeks could go by before the request reached the doctors and even then it was not certain that the doctor would call the inmate. Alternatively, an inmate could persuade a prison officer that he needed to see a doctor urgently. The material conditions of the medical facilities remained inadequate and in a state of neglect and dilapidation. They need to be completely renovated and re-equipped. Further, the dental equipment should be repaired to enable the full-time dentist to work. The Idrizovo health care team was supported by six "assistant" prisoners who were essentially performing nursing duties such as maintaining the health care registers, distributing medication and being on-call to deliver care to other prisoners when no member of the health care team was present (notably deciding on whether to call the emergency response service in Skopje which they did on more than 200 occasions in 2016). In the CPT's opinion, prisoners should never be involved in health care duties. The CPT reiterates its recommendation that immediate steps be taken to replace prisoners performing such nursing duties with qualified health care staff. [...] The CPT reiterates its recommendation that every newly arrived prisoner be adequately interviewed and physically examined as soon as possible, and at the latest within 24 hours (cases of examination were noticed in the Idrizovo Penitentiary after 7 or 10 days after admission) upon receipt by a doctor or a fully qualified nurse who will notify the doctor and all allegations of ill-treatment and signs of injury should be fully recorded in accordance with the appropriate instructions. Furthermore, screening of prisoners for infectious diseases, in particular hepatitis and HIV, should be offered, along with voluntary counselling. The CPT calls on the national authorities to take*

VII. The Problem of Inadequate Treatment of Prisoners in Terms of the Re-socialization Process

The main purpose of the prison sentence – resocialization – is not realized in penitentiary institutions across the country. This is primarily due to inadequate treatment of convicted persons. In this respect, special attention should be paid to the following considerations.

First, a significant part of the treatment is the education of convicted persons, given the fact that the majority of prisoners have finished secondary education, as well as elementary education. Vocational training of prisoners is also significant. Convicts should be allowed training for a particular profession. It is very important that vocational education be developed in a way that will strengthen the employment opportunities of prisoners after their release, as this will ensure basic literacy for those who need it.⁶⁴

The second issue that needs attention is providing opportunities for convicted persons to work. The current situation is quite unfavorable. The NPM report for 2012 highlights the importance of the working engagement of convicted persons as an important factor in favor of resocialization, but adds that *“Only convicts with a milder treatment regime (semi-open or open treatment) are provided through work the opportunity to gain and to develop work habits and acquire specialized knowledge for work at liberty [...] In most of the penitentiary institutions, convicts from closed departments are not engaged in work [...] (which) may negatively affect the process of resocialization”*.⁶⁵

Especially important is the application of specific programs for certain categories of prisoners.⁶⁶

steps to ensure that medical confidentiality is fully guaranteed in all prisons.” Council of Europe, (fn. 25).

⁶⁴ Recommendation No. R (89) 12 of the Committee of Ministers to Member States on Education in Prison, 13/10/1989.

⁶⁵ Ombudsman, (fn. 54).

⁶⁶ Treatment of convicted persons who abuse drugs and other psychotropic substances; Treatment of convicted alcohol abusers; Treatment of convicted persons who committed sexual acts; Treatment of convicted persons by violent behaviour; Treatment of persons convicted of crimes with elements of violence; Treatment of younger adult convicts; Treatment of convicted persons – juveniles; Treatment of convicted persons – women; Treatment of convicted persons to life imprisonment; The medical and psychological treatment of the convicts.

Post-penal assistance after release from prison is an extended part of the treatment of convicted persons. This type of treatment is an element of the re-socialization of the prisoner as a continuous process that aims to provide the latter with a successful, positive life in the aftermath of his release from prison.

Because in Macedonia recidivism mostly occurs in the period immediately following the release, i.e. 4-6 months and 1-3 years after release, it can be concluded that this is a critical period when assistance is necessary. In assessing the problems that the former convicted face after release from prison and how to solve these issues, there is a need for a more active role of the judge for the execution of sanctions and the Center for Social Work.⁶⁷

Assistance after release as a form of penal treatment requires the realization of the principle of humanity in the execution of criminal sanctions. Upon release from prison, the convict is in a state of psychological tension related to the day of release and the path to freedom. Experience has shown that inmates experience life's freedom differently and manifest different feelings and moods. Some show great joy and are eagerly awaiting the day of leaving the institution as the day they meet their new life. Others are determined to lead a normal social life, to respect the positive social norms in order not to regain the status of a prisoner again. Thirdly, some are indifferent to what they expect on the day of release. Fourthly, some have fears about the uncertainty of their lives.⁶⁸

For better results after release from penitentiary institutions as the final phase of the re-socialization process, it is necessary, first of all, to treat the former inmates in the same way as others members of society.

Currently, we are witnessing a paradoxical phenomenon in Macedonia. Because of the difficult situation in the country, it often happens that immediately after release from prison, individuals commit new offenses in order to return to prison because there they are provided with a place to live, as well as food, conditions that they would otherwise not be able to provide for themselves outside of prison.⁶⁹

⁶⁷ *Gruevska-Drakulevski*, Imprisonment and Recidivism, 2017, p. 356.

⁶⁸ *Gruevska-Drakulevski*, Post Penal Assistance of Ex-Prisoners: The Case of the Republic of Macedonia, *Iustinianus Primus Law Review* 2011, p. 21.

⁶⁹ *Gruevska Drakulevski*, The Impact of Imprisonment on Recidivism, 2010, p. 344.

Thus, it is necessary to undertake initiatives to establish organizations that would assist convicted persons after their release, since these organizations will not only help a large number of former inmates but also have an indirect effect on society as a whole.

VIII. Ill-treatment and Corruption

In general, with a few exceptions, the CPT's delegation received no allegations of ill-treatment by prison officers in Skopje Prison and Stip Penitentiary.

By contrast, ill-treatment by staff and inter-prisoner violence at Idrizovo Penitentiary remain serious problems.⁷⁰ The violence in Idrizovo Penitentiary is integrally linked to the endemic corruption that has pervaded the whole prison and involves prison officers, including officers of all grades up to the most senior officers, and educators.⁷¹

Prison staff must respect the right of prisoners to physical and mental integrity. Prisoners should be able to submit requests and complaints without fear of retaliation.

⁷⁰ *"The CPT's delegation received a number of consistent allegations of deliberate physical ill-treatment of prisoners by prison officers. The alleged ill-treatment consisted mainly of slaps, punches, kicks and blows with a baton to various parts of the body and once again apparently occurred in the control room³ on the ground floor of the main closed accommodation building and dormitories. Physical violence was said to be used by prison staff as a tool to impose discipline, as an unofficial punishment for possession of illicit items such as mobile phones and following instances of inter-prisoner fights, or as a reaction to requests and complaints made by the prisoners concerned. Several of the prisoners interviewed also stated that during frequent cell searches, prison staff behaved roughly and often destroyed inmates' property. The delegation again found that newly-arrived prisoners sentenced for sexual offences were ill-treated by other inmates in the admission unit",* Council of Europe, (fn. 25).

⁷¹ *"Prisoners said that they paid up to 2,000 Euros to be allocated to a cell rather than a dormitory and allegedly 400 Euros for home leave. Mobile phones were present throughout the prison, with smart phones costing some 300 Euros plus a small daily payment to prison officers to look the other way. Indeed, the fact that almost all the "public" card phones were out of order at the time of the visit contributed to feed the business of mobile phones. Mobile phones were openly used. Each wing had a prisoner ("winger") who acted as the prison staff's intermediary for all transactions and usually had better living conditions.",* Council of Europe, (fn. 25).

*“The CPT remains concerned that deaths in custody are not systematically the subject of a thorough investigation to ascertain, inter alia, the cause of death, the facts leading up to the death, including any contributing factors, and whether the death might have been prevented”.*⁷²

IX. Other Issues

Another problem pointed out by the CPT is the disciplinary procedure and the solitary confinement as a disciplinary punishment for juveniles, which according to the CPT recommendations should be abolished.

Also, the CPT once again reiterated its recommendation that a „State Commission be established without further delay and that steps be taken to ensure that it and existing supervisory mechanisms operate in a professional, transparent and independent manner.”⁷³

E. Conclusion

By analyzing the principles for the execution of sanctions for criminal acts and misdemeanors, especially the principles for the execution of the sentence of imprisonment, it can be concluded that the Macedonian penitentiary system has the characteristics of a modern system. It is one of the penitentiary systems that fully incorporates the Nelson Mandela Rules, the revised Standard Minimum Rules for the Treatment of Prisoners and the European Prison Rules in the Law on Execution of Sanctions.

Considering the general and specific principles upon which the penitentiary system is based, it is clear that this is a dynamic system that is constantly evolving and changing in correlation with the effects of the re-socialization of the convicted persons. Nevertheless, the system shows weaknesses, especially there where objective conditions for the execution of sanctions in accordance with the foregoing principles have not been created.

⁷² “At Idrizovo Penitentiary, nine inmates died in 2016 and another three in January 2017. Autopsies were carried out by the Institute for Forensic Medicine but the prison was not always informed of the outcome and no steps were taken to investigate the cause of the death.”, Council of Europe, (fn. 25).

⁷³ Council of Europe, (fn. 25).

The difficulties faced by the prison system in the Republic of Macedonia cannot be attributed to the lack of laws and by-laws. On the contrary, there is "inflation" of by-laws that to some extent hamper the work of the prison staff. The problem lies in the fact that laws are not always applied consistently enough.

Further, the need of providing human resources, as well as technical and material preconditions for the smooth functioning of the penitentiary institutions should be addressed in order to guarantee respect of the rights of persons deprived of their liberty. It is also necessary to strengthen the supervision of the work of the institutions, in particular, the judicial supervision of the execution of the sanctions entrusted to the judge for the execution of the sanctions and the expert-instructor supervision in the execution of the sanctions entrusted to the Ministry of Justice through the Directorate for Execution of Sanctions. Given the fact that the State Commission for Supervision established by the Government does not function, measures should be taken to ensure that it fulfills its responsibilities.

In this context, a question arises as to why prisoners, given the current state of the penitentiary system, do not request judicial protection of their rights. There is almost no data on court procedures that protect the rights of prisoners. Hence, there is a need for systematic research on the protection of the rights of convicted persons by resorting to legal means, such as legal advice and the right to appeal of convicted persons to international bodies.

Surprisingly, in a position of severe violations of the rights of prisoners in Macedonia, none has asked for protection of his/her rights before the European Court of Human Rights (ECtHR) in Strasbourg. This is not the case with prisoners from other states. Complaint before the ECtHR have dealt with the hygienic conditions in prisons, ill-treatment by prison staff, prison overcrowding, frequent displacements of prisoners from one institution to another, imposing disciplinary solitary confinement, searches of prisoners, surveillance of cells, inadequate treatment of mentally ill persons, inappropriate calorie value of food, inadequate medical assistance provided, hunger strikes that resulted in a death of a prisoner or forcibly feeding prisoners and a series of other cases of violations of the rights guaranteed to prisoners by international and na-

tional law.⁷⁴ In most cases, the ECtHR held that there had been a violation of Article 3 of the Convention on the prohibition of inhuman or degrading treatment.

⁷⁴ European Court of Human Rights, Factsheet – Detention conditions and treatment of prisoners, September 2018; European Court of Human Rights, Factsheet – Detention and mental health, June 2018; European Court of Human Rights, Factsheet – Prisoners' health-related rights, May 2018; European Court of Human Rights, Factsheet – Hunger strikes in detention, August 2015.