

# Helsinki bulletin



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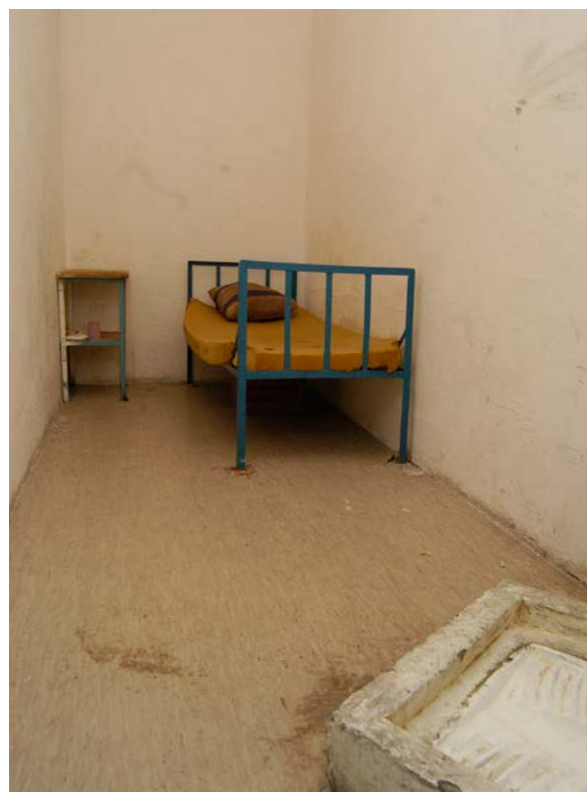
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## DISPUTABLE AMNESTIES

Not long ago, the Ministry of Justice and State Administration submitted a draft law on amnesty for governmental consideration. The Ministry suggested that the law should be passed under summary procedure so as to adjust the accommodation of persons under sentence and those awaiting trial to European standards as soon as possible.

According to ministerial sources, the number of prisoners and detainees in all Serbian prisons exceeds 11,000, whereas their accommodation capacities total 7,500 persons. The Ministry claims this is among the reasons why this law should be adopted.

The draft provides that general pardon shall be granted to persons sentenced to up to 3-month imprisonment: hence, these persons would be released as soon as the law is enacted. Further, persons sentenced to 3 to 6-month imprisonment will be entitled to have their terms halved; prisoners under sentences longer than six months will have their terms decreased by one quarter and all those above 70 years will be amnestied. The draft provides exceptions too. The list of those except from amnesty includes: prisoners sentenced for organized crime, terrorism, first degree murder, severe



violence, war crimes, "illegal production and sale of narcotics," bribe and recidivists.

Minister of Justice Nikola Selakovic takes this is the best draft law on amnesty ever as it will decrease overcrowding, improve conditions of life in Serbian prisons (move them towards European standards) and unburden the state budget. However, the draft almost brims with deficiencies.

First and foremost, it is not clear why an important legislation should be passed under summary procedure. It is common knowledge that the situation of Serbian prisons is such that fundamental human rights of prisoners have been violated for years.<sup>1</sup> Overcrowding is not the only problem plaguing prisons. Therefore, the law in itself could not solve it: it can produce no effect on other, by far more important living conditions that include inter-prisoner violence, quality of food, hot water, clean and airy dormitories, work therapies, recreational activities, etc. Like in many other cases not only “mercy” but also politics are in the background of this initiative.

Namely, in his election campaign in 2012, presidential candidate (now the President) Tomislav Nikolic promised an amnesty law. The law would actually play into the hands of prisoners prone to voting for Nikolic in the next presidential run.

In September 2012 the Helsinki Committee began yet another series of fact-finding missions to Serbian prisons. Its monitoring team observed at the time that prisoners were dissatisfied with the fact that the law had not been adopted yet. The team shared its observation with prison managements and alerted them of possible prison riots in the event the “promised” law was not passed. In October 2012 the media broached a possible riot in the Pozarevac prison.

Evidently, the President is now after meeting his promise. But at what price? Hypocritical resort to European standards and release of some 1,000-3,000 prisoners can benefit the state in no way: numbers of prisoners who have not undergone any training, educational, resocialization and pre-release program would be at large. Unprepared for the life in the outside

community they could easily become recidivists. Justification for general pardon would be senseless as prisons would be again plagued by overcrowding. This can be additionally argued by the fact that up to 70 percent of prison population is persons dependent on psychoactive substances and 50 percent are already recidivists. The draft does not provide amnesty for persons who have been sentenced to imprisonment three times or more, but does to those serving their second terms in prisons.

Though the draft envisages amnesty for prisoners under sentences longer than six months, Premier Ivica Dacic said that it would not apply to persons sentenced for serious crimes but just to prisoners under tree to six-month sentences. So why is it that the draft contains provisions that will certainly not be implemented? Does this imply that it will be implemented selectively? A law as such could easily be misused and set free quite soon persons such as, say, Andija Draskovic or Aleksandar Golubovic. These two with long criminal records are presently serving their time for crimes that are not excluded from amnesty. How many criminals like them will be entitled to general pardon?

Explaining the whys for the law, the second chapter of the draft quotes changed social, economic and political circumstances and a number of international standards on punishment and incarceration adopted in the meantime. The question is: which international standards or alternative sanctions are implemented through amnesty for so many prisoners? It goes without telling that amnesty is nothing new as an international standard and has nothing to do with alternative sanctions. In 2010 Serbia adopted a strategy on coping with overcrowding in prisons in the period 2010-15. The strategy includes the measures to be taken for this purpose. These measures are non-incarcerating punishments and sanctions, conditional releases or early releases, probation

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<sup>1</sup> Helsinki Committee has been monitoring Serbian prisons since 2000.

services, etc. On the other hand, the strategy underlines that any decrease in overcrowding should not negatively affect citizens' security. Provisions of the draft lead towards this goal in no way.

Conditional release as one of international standards is rarely used though it could be in many cases. Conditional release would decrease overcrowding as it is applicable to prisoners having served two-thirds of their time. The reason why conditional release is so rare in domestic prison system is that courts of law, when deciding on such pleas, want prison institutions' guarantees that a prisoner has been resocialized and not prone to crime. Prison institutions, for their part, cannot provide such guarantees. So it happens that a prisoner remains incarcerated for the entire duration of his or her sentence.

The problem of overcrowding could also be solved through a speedier process of extradition of foreign nationals. At present foreign nationals punished with imprisonment have to wait for almost one year to be extradited and are an extra burden on Serbia's budget in this period. Some of them do not even initiate the extradition process as it would have cost them some 1,000 Euros. So they decide to serve their time in Serbia's prisons. Apart from speeding up the extradition process, it would cost less the state of Serbia to cover all extradition expenses than to cater foreign nationals in prisons.

There surely are other ways for alleviating the problems that plague Serbia's prisons. However, the state has opted for a shortcut with one-off effect.