

TALLINN UNIVERSITY OF TECHNOLOGY
Faculty of Social Sciences
Tallinn Law School

Maria Pavlenko

**Unjustified limitations of prisoners' human rights and
consequences of it**

Master Thesis

Supervisor: Prof. Katrin Nyman-Metcalf, Ph.D

Tallinn 2016

I hereby declare that I am the sole author
of this Master Thesis and it has
not been presented to any other
university of examination.

Maria Pavlenko
“ “ 2016

The Master Thesis meets the established requirements

Supervisor Prof. Katrin Nyman-Metcalf, Ph.D
“ “ 2016

Accepted for examination “ “ 2016

Board of Examiners of Law Master's Theses

.....

Table of Contents

Abbreviations.....	3
1. Introduction.....	4
2. Protection of prisoners' rights	9
2.1. Theory of natural law and history of protection of prisoners' human rights.....	9
2.1.1. Natural law concept	9
2.1.2. History of development of protection of prisoners' human rights	10
2.1.2.1. Development of enforcement of prisoners' human rights protection under the ECHR and other documents that provide protection of prisoners' human rights.....	11
3. Justified limitation of Human Rights in Prison.....	15
3.1. Freedom of movement.....	15
3.2. The right to privacy.....	16
4. Unjustified limitations of the prisoners' rights protected by the Article 3 of the ECHR.....	18
4.1. Treatment of prisoners in the past and nowadays. The analysis of how interpretation of Article 3 of the ECHR has changed through the time	22
4.2. Unjustified limitations of prisoners' right to healthcare.....	26
4.2.1. HIV+ prisoners	28
4.2.1.1. Treatment of HIV+ in prison	28
4.2.1.2. Justified or unjustified limitations of the right to confidentiality with respect to HIV+ prisoners	30
4.2.2. Medical assistance for mentally disabled prisoners.....	31
4.2.3. Future step in protection of prisoners' health under the Article 3 of ECHR.....	32
5. Unjustified limitations on the civil, political, economic and social rights in case of imprisonment	34
5.1. The analysis of ways of derogation of civil, political, economic and social rights from the prisoners and possible consequences of it	36
5.1.1. Civil	36
5.1.1.1. Unjustified violations of prisoners' right to family in Estonia	39
5.1.2. Political	40
5.1.2.1. Examples of approaches of different states.....	44
5.1.3. Economic and social	46
5.1.3.1. Right to work and education	47
5.1.3.2. Situation in Estonia	48
6. Consequences of unjustified limitations of prisoners' human rights	50
6.1. Purpose of the imprisonment.....	50
6.2. Recidivism and necessity of proper rehabilitation.....	52
6.2.1. Recidivism	54
6.3. Examples of reintegration process in countries	56
6.3.1. Germany - example of successful reintegration.....	56
6.3.2. The USA - example of unjustified limitations of prisoners' rights, non-developed reintegration process and consequences of it.....	59
Conclusion	61
Summary	65
Reference list	68
1. Books and Independent Publications.....	68

2. Articles and Contribution to Edited Works	69
3. Sources Available on the Internet.....	72
Table of Cases.....	73
Table of Legislative Acts.....	74

List of Abbreviations

AIDS	Acquire Immune Deficiency Syndrome
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
ECHR	European Convention on Human Rights
ECtHR	European Court of Human Rights
EU	European Union
HIV	the Human Immunodeficiency Virus
ICCPR	International Covenant on Civil and Political Rights
ICESCR	International Covenant on Economic, Social and Cultural Rights
RKHKo	Riigikohtu halduskolleegiumi otsus
RKVS	Riigikogu valimise seadus
the USA	the United States of America
UN	United Nations

1. Introduction

In the context of building an independent democratic state and establishing market relations, the task of the ensuring steadfast implementation of laws and public order together with improvement of law enforcement practice becomes of high relevance.

Protection of human rights is a challenge especially in the case of prisoners'¹ human rights. Disinterested society and different goals of criminal law and human rights law are key factors of responsible for difficulties with prisoners' human rights enforcement.

In recent years' protection of Human Rights has received special support from society. Modern society accepts that man and woman should be treated equally, that people have a right to freedom of speech and a right to protect their private and family life. In society, it is even accepted that in prison, as well as outside the prison, should be no discrimination on the ground of race, colour, sex, language, religion, political opinion, or national origin. Despite on this, protection and enforcement of prisoners' human rights are still not in the interest either of society, or of legislative bodies. Probably, this is the main reason why prisoners still cannot use their human rights to the full.²

It is obvious that prisoners are treated differently in society. It is understandable why it is so. People in society should be responsible for their actions. It is logical, that criminals should serve a sentence, be isolated from the outside society, but later on, they should be given an opportunity to reintegrate in society. According to the reasoning of scholar Valson prisoners have special status in society and they are subject to special regime, but they are still should be provided with the protection of basic rights.³ According to international documents, European Convention on Human Rights (ECHR)⁴ and European Prison Rules⁵, prisoners should be treated justly and fairly. Obviously, their human rights should not be violated.

Treatment of the prisoners has changed through the time. Law, enforcement bodies, dynamic development of the world and increase of minimum living standards have affected the growth of

¹ In the context of this thesis prisoner includes person held in police custody, in pre-trial detention and in prison.

² Ghedia, J. *Prisoners: rights, rhetoric and reality*. The University of British Columbia, 2012, p 1.

³ Valson, M.C. "Rights of the prisoner: an evolving jurisprudence." Thesis for the award of the degree of doctor of philosophy in the faculty of law, 1994, p 23.

⁴ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5, available at: <http://www.refworld.org/docid/3ae6b3b04.html> (accessed 15 December 2015)

⁵ Council of Europe: Committee of Ministers, Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, 11 January 2006, Rec (2006)2, available at: <http://www.refworld.org/docid/43f3134810.html> (accessed at 10 December 2015)

human rights protection. Commentary to recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European prison rules states that: “Evolutionary changes in society, crime policy, sentencing practice and research, together with the accession of new member states to the Council of Europe, have significantly changed the context for prison management and the treatment of prisoners.”⁶

It should be noted that only at the beginning of twentieth century society started recognizing that prisoners are also human beings, not slaves. Before that, a common position of the society was that with prisoners could be done anything in the name of correction and punishment.⁷ In addition to the right to liberty, prisoners were deprived of all civil rights. Condition in prisons were truly inhuman. Such situation was common in European Prisons.

In the course of time people started to think more about this topic, which led to development of prisoners’ human rights protection. However, as the analysis of ECtHR cases reveals, these changes are not sufficient.

In order to understand to that extent prisoners’ human rights should be protected answers for additional questions should be found. Should society care about prisoner’s health? Should society care about prisoner’s detention conditions, food and regime or condition of the imprisonment should be as bad as possible in order to fulfill the preventive goal of criminal law. Should society provide protection to prisoner’s human rights? Should society think ahead and understand that in future these people will come back to society and our safety depends on how healthy, educated, or aggressive they are or should it not? Moreover, answers for pure legal questions should be found. Is the limitation of prisoner human right in accordance with law? Does it pursue a legitimate aim? Is it necessary in democratic society?

These questions are not easy to answer, and everyone has his own position, but analysis of court cases and laws show that to prisoners, as to every human being, should be provided with the protection of their human rights. Prisoners can be deprived of these rights only if the purpose for using such measures is legitimate and derogation is proportionate. Furthermore, deprivation of prisoners’ human rights could lead to additional problems not only for prisoners, but for society in general, that is why each case of derogation of prisoner’s human rights should be properly examined.

⁶ Commentary to recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European prison rules, chapter 2, p 39.

⁷ Gromwell, Paul F. *Jail and Justice*. Charles C. Thomas Publishers, 1976, p 267.

Deprivation of prisoners' human, civil and political, economic, social and cultural rights, with the special emphasis to the detention and treatment conditions of prisoners, taking into account their physical, mental and other disabilities is a good topic to debate with respect to the question of how to provide for prisoners' protection of human rights, but at the same time do not destroy the contemporary criminal system.

In order to answer to the questions above, it is necessary to understand what the aim of imprisonment is? Is it used to bring sufferings to prisoners, in other word - revenge or is the aim of the imprisonment to help to prisoner reintegrate in society and minimise the risk of recidivism after release? Today some countries still pursue the first aim as the USA, while other countries, as Germany follow the second aim, and some countries are on the way to understand that the aim of the imprisonment is successful reintegration of prisoners into society outside the prison and to help them to become full member of society with a job, a family and a feeling of respect for the law.

These countries started to follow the common reasoning that deprivation of liberty does not mean, that prisoner automatically loose all legal and human rights. Prisoners should not be deprived of civil, political, economic and social rights automatically, if they lose the right to liberty. Civil rights comprise in itself right to marry, divorce, property, to protect their rights in court. To scope of political rights belongs right to vote and right to be elected. The main issue of social and economic rights is to provide people with social benefits such as disability payments, maternity payments, free education, different job training, and placement services.⁸ Is it fair to derogate these rights of prisoner or is deprivation of liberty already a sufficient punishment for a committed crime?

All these rights should be guaranteed to prisoners whenever possible. The reason for that is simple, deprivation of these prisoners' right leads to unsuccessful rehabilitation outside society and to an increase in reoffending rates. Consequently, it has a negative effect on society, because more people outside the prison could suffer from the actions of reoffenders. Even if these prisoners do not commit a crime again, they often are illiterate, have lack of social skills, are drug addicted, could have serious health problems and often they have problems with further employment. As scholars and practice show protection of prisoners' human rights and prisoners adequate treatment could help to solve these problems.

⁸ Jacobs, J.B. *New perspective on prison and imprisonment*. New York: Cornell University Press, 1983, pp 80-105.

Unfortunately, practice shows that protection of prisoner's human rights is not in the list of high priorities of the countries policies. However, analysis of scholarly articles and court cases shows that issues of protection of prisoners' human rights should be reorganised as soon as possible.

Treatment of prisoners in Estonia also should be reviewed. According to the CPT report overcrowded prisons, poor medicals assistance, inappropriate regime for the prisoners, poor sanitary conditions and ventilation, unjustified restrictions on communication with family members have effect on prisoners.⁹ All these factors could affect reoffending levels and reintegration process of the prisoners into society outside the prison.

Research of Estonian Ministry of Justice shows that within six months 60 % of released prisoners commit a crime again. Within a year, 48 % of released prisoners reoffend the crime, 30 % of prisoners, who were in a shock incarceration program commit a crime again, 34 % of prisoners who had conditional sentence and 20 % of prisoners who were under electronic surveillance. These numbers show that Estonia has problems with the reintegration of prisoners into society, which consequently affects on level of reoffending.¹⁰

Should be noted, that our every action and decision has consequences. These consequences could affect only on one person or on the group of society or on the community as a whole at present moment or in perspective.

If we are talking about law, obviously that decision of the legislative body affect the society of this State in the whole and ignorance of international prisoners treatment rules and European Convention on Human Rights brings also serious consequences on future development and level of safety in society.

In the present thesis will be discussed question of the protection of prisoners' human rights, documents, that provide protection for prisoners' human rights, prisoners rights granted by the Article 3 of the ECHR and how the understanding of Article 3 of the ECHR is changed through the time, unjustified limitations of prisoners civil, political, economic and cultural rights and possible effect of those limitations on recidivism.

⁹ Council of Europe: Committee for the Prevention of Torture, *Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 May to 6 June 2012*, 21 January 2014, CPT/Inf (2014) 1, available at: <http://www.cpt.coe.int/documents/est/2014-01-inf-eng.htm>

¹⁰ Estonian Ministry of Justice, *Retsidiivsus Eestis*, 2010, available at: http://www.kriminaalpoliitika.ee/sites/www.kriminaalpoliitika.ee/files/elfinder/dokumendid/retsidiivsus_eestis_justiitsministeerium._2010.pdf

Hypothesis of the present thesis is deprivation of liberty contributes to automatic loss of prisoners' human rights. Also special attention will be dedicated to the research on the question – Is the derogation of prisoners' human rights affect on the prisoners' reoffending and reintegration. Thought this analysis confirmation of the hypothesis should be found.

The aim of this paper is demonstrate through analysis that unjustified limitations of the prisoners' rights granted by Article 3 of the ECHR, Article 8 of the ECHR, article 3 of Protocol 1 of the ECHR, Article 2 of Protocol 1 of the ECHR are unavoidable consequence of deprivation of liberty. Secondly, is it important to analyze that consequences violation of prisoner human rights (Art.3 of ECHR), political, social and economic, and civil rights, have. Thirdly, it is necessary to provide an analysis of the opportunities of protection of prisoners rights.

2. Protection of prisoners' rights

"...all nations are entitled to human rights regardless of race, nationality, place of residence, sex, national or ethnic origin, religion, language, or any other status."¹¹ Despite of the fact that human rights are privileges of all human beings, prisoners' human rights often are violated in a serious way. Probably the reason of such violation is that protection of prisoners rights was not and still not the highest priority of the states policy.

Prisoners should have the right to effective remedies in the case of violation of their human rights. They should have opportunity to seek the protection of their human rights without the fear of additional punishment from the prison side or from the side of the State. Prisoner should have the right to turn to the court, ombudsmen or the ECtHR.¹²

For the present moment prisoners receive protection of some rights, the result is far from ideal, but still some success exists. Protection of prisoners rights has a history and own development points. From the starting point of protection of prisoners rights until present moment appeared some crucial documents, which affected on the development of protection of prisoners' human rights and enforcement institutions based on these legal documents. Besides the international documents, which regulate the protection of prisoners' human rights, on the enforcement of prisoners' human rights affected development of society. Economic growth expanded understanding of means and methods of protection of human rights. Moreover, level of minimum living standards and treatment have grown.

2.1. Theory of natural law and history of protection of prisoners' human rights

Discussion on topic of protection of prisoners rights should start from the question "what is the right?".

2.1.1. Natural Law concept

According to the theory of natural law every person has human rights. Natural law usually treated as a unity of universal norms and principals, which are the basis for all legal systems in civilization. Natural rights are inherent, innate, direct and imperative, which come from the

¹¹ Quigley, B. and Godchaux, S. "Prisoner human rights advocacy." *Loyola Journal of Public Interest Law*, vol. 16, 2015, p 365.

¹² O'toole, S. and Eyland, S. *Corrections Criminology*. Hawkins Press, 2005, p 72

meaning and purpose of society." There are rights which every member of our species is entitled to: human rights".¹³ According to the Thomist doctrine on natural law "If I have a natural-as we would now say, human right I have it by virtue of natural law."¹⁴ It means that without serious reason these rights could not be derogated from the person. Furthermore, it is impossible to derogate together several natural rights without proportionate and legal aim.

For democratic society natural rights are very essential, because they are central element of political, economical and social life.¹⁵

Consequently, it means that according to the theory of natural law, prisoners are still human beings, despite on the fact of crime commitment. They also should enjoy the rights granted to them by virtue of natural law. It means that natural rights could not be derogated from them without proportionate and legitimate aim.

At the time of serving sentence prisoners are deprived of their liberty. According to the theory of natural rights, there is no explanation for the additional derogation of other natural rights granted to every person.¹⁶

2.1.2. History of development of protection of prisoners' human rights

The concept of human rights started to rise already long time ago and was analyzed by many famous scholars such as: Jack Donnelly, Samuel Moyn, Thomas Paine, John Stuart Mill, G.W.F. Hegel, John Locke. Should be noted that massive violation of human rights and degrading treatment of human dignity in the period since 1939 until 1945 gave the rise of the development of protection of human rights.

Development of the prisoners' rights should be considering with the developments in the field of penal philosophy, civil liberties and economical and social progress of society.

Protection of prisoners rights is mostly discussed on two levels. First is governmental, here into account are taken welfare of the country, economical level, common treatment of the prisoners. With the development of society, increase of the minimum living standards in society - attention to protection of prisoners human rights began to grow and theory that conditions of treatment of

¹³ Tierney, B. "Natural law and Natural Rights: Old Problems and Recent Approaches" *Review of Politics* 64 (3), 2002, p 391.

¹⁴ Tierney, B., *supra*.n.13, p 392.

¹⁵ Kessler, F. "Natural Law, Justice and Democracy-some reflections on three types of thinking about law and justice." *Faculty Scholarship Series*, 2730, 1944, pp 46-54.

¹⁶ Tierney, B. *The idea of Natural Rights: Studies on Natural Rights, Natural Law and Church law*. William B. Eerdmans Publishing Company Grand Rapids, 1997, pp 30-36.

prisoners must be “compatible with human dignity in terms of current expectations.....the standards have been heightened”¹⁷.

Second level in international level and there are several documents, which provides a basis for the enforcement of the protection of prisoners Human Rights. They are: International Covenant on Civil and Political Rights (ICCPR)¹⁸, UN standard Minimum Rules for the Treatment of Prisoners¹⁹, European Convention for the prevention of Torture and Inhuman or Degrading Treatment or Punishment and European Convention on Human Rights (ECHR). As was mentioned above all these documents give the basis for protection of prisoners’ human rights, because of that all of them will be used in the context of present thesis.

2.1.2.1. Development of enforcement of prisoners’ human rights protection under the ECHR and other documents that provide protection of prisoners Human Rights

One of the aims of the establishment of the European Convention on Human Rights was to “reaffirm faith in fundamental human rights”²⁰. The ECHR supports the aims of the UNs Universal Declaration of Human Rights of 1948, which aimed to “...reaffirm faith in the dignity and worth of the human person, in the equal rights of the human person, in the equal rights of men and woman and nations large and small...”²¹ As a result for present moment the European Convention on Human Rights is one of the most important documents on the protection of human rights on the international level.²²

The ECHR was not the first established document, which was developed for the protection of Human Rights. Distinctive feature of the ECHR 1950 that it was the first international legal document, which provides not only the text, but at the same time established enforcement organs, which provided real possibilities for Human Rights protection.²³

¹⁷ Roscam, H.A. “Prisoners Right to Healthcare, a European Perspective”. *European Journal of Health Law*, 20 (1), 2013, p 9.

¹⁸ UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol.999, available at: <http://www.refworld.org/docid/3ae6b3aa0.html> (accessed 14 April 2016)

¹⁹ United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955, available at: <http://www.refworld.org/docid/3ae6b36e8.html>, (accessed 24 March 2016).

²⁰ Ibid.

²¹ UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III), available at: <http://www.refworld.org/docid/3ae6b3712c.html>

²² Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, *supra*.n.4.

²³ Ma,Jue. “The European court of human rights and the prisoners and criminal defendants under the European Convention of Human Rights.” *International Criminal Justice Review*, vol. 10 (1), 2000, p 55.

Initially there were two organs, who could enforce the Convention. They were European Commission on Human Rights and European Court of Human Rights and European Court of Human Rights (ECtHR). As practice shows these two organs made significant implications in international law.²⁴ In almost for 66 years of existence of the convention, European Court of Human Rights handle a huge amount of cases, which are one of the main sources of international human rights law.²⁵ Court is one of the major actors, which regulates the protection of prisoners human rights. Issues that covered by the ECtHR are following with respect to prisoners: “pretrial detention, length of criminal proceedings, prisoners rights, secret surveillance of mail and telecommunications, the rights of the accused to the free assistance of an interpreter, the right of a person detained to be brought promptly before a judge, termination of criminal proceedings and the presumption of innocence, post sentence detention of a recidivist, trial in absentia, etc.”²⁶

European Commission on Human Rights also had made a huge implication in the development of human rights protection, especially with respect of prisoner’s human rights. One of the most essential for present thesis implications of the Commission is the establishment of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).²⁷ Since that time protection of prisoner’s human rights has received more particular form and status. Briefly speaking, CPT is non-judicial preventive organ, which could make recommendations on the basis of their analysis and pay attention of state authorities on critical moments of prisoner’s treatment conditions in order to avoid future claims of prisoners in the ECtHR.

In the most of the cases, prisoners in order to protect their rights use following provisions of the Convention: Article 3, which prohibits torture and inhuman and degrading treatment and punishment; Article 6, which ensures the right of fair proceedings to determine civil and criminal liabilities; Article 8, which provides the right to respect for prisoners private and family life, home, and correspondence.²⁸

Interesting to note, that in 1960s more that half of the submitted complains were from the prisoners. Unfortunately, huge part of the complaints was returned to the complainants. The

²⁴ Ma,Jue., *supra*.n.23, p 54.

²⁵ *Ibid.*, p 55.

²⁶ *Ibid.*, p 56.

²⁷ Council of Europe: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1989.

²⁸ Foster, S. *Human Rights and civil liberties*. Harlow, England; New York: Pearson/Longman, 2008, pp 304-309.

reason of this was that doctrine of inherent limitations²⁹ were applicable at that time. Doctrine stated that limitation of prisoners rights it is unavoidable and lawful consequence of imprisonment and additional justifications for violations are not essential. Otherwise, limitations of free peoples' human rights should be provided appropriate justification.³⁰

Moreover, it means that regulation of this issue in legal level is also developed.³¹ In 1975 this doctrine was rejected by the European Court. In case *Golder v. UK*³² the ECtHR stated that all limitations of human rights should be justified according to the criteria provided by the Convention.³³

With the time number of complaints from the prisoners started to decrease and in recent years it is about 11 per cent of the total amount of complaints are submitted by prisoners.³⁴

What is the reason of decreasing of the number of complaints from prisoners? Unfortunately, this number is not showing that all problems were solved or that prisoners' human rights are now exhaustively protected. This number also provide information that during the period of imprisonment for prisoners provided poor legal assistance.

Next document, which is in use is European Prison Rules 2006. This document based on the United Nations Standard Minimum Rules for the Treatment of Prisoners. Unfortunately, this document is not legally binding for member states of the Council of Europe. It provides principles of treatment of prisoners and standards of detention facilities.³⁵

There are other documents that provide protection of prisoners' human rights, such as International Covenant on Civil and Political Rights (ICCPR)³⁶, International Covenant on Economic, Social and Cultural Rights (ICESCR)³⁷ and Convention on the Elimination of All

²⁹ Abels, D. *Prisoners of the international community: The legal position of persons detained at international criminal tribunals*. T.M.C. Asser Press, 2012, pp 45-48

³⁰ Arai-Takahashi, Y. *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*. Antwerp: Intersentia, 2002, pp 11-13

³¹ Sarkin, J., Haeck, Y. and Lanotte, J. *Resolving the Tension between Crime and Human Rights: An Evaluation of European and South African Issues*. Maklu Publishers, 2001, p 246

³² *Golder v. United Kingdom*, App no. 4451/70, 21th February 1975, European Court of Human Rights [ECtHR]

³³ Sarkin, J., Haeck, Y. and Lanotte, J. *supra*.n.31, p 246. and *supra*.n.32

³⁴ Sarkin, J., Haeck, Y. and Lanotte, J. *supra*.n.31, p 246.

³⁵ Council of Europe: Committee of Ministers, Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, *supra*.n.5.

³⁶ International Covenant on Civil and Political Rights, *supra*.n.18.

³⁷ UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December, United Nations, Treaty Series, vol.993, available at: <http://www.refworld.org/docid/3ae6b36c0.html>, (accessed 14 April 2016)

Forms of Discrimination Against Women (CEDAW)³⁸. In the boundaries of the present thesis they will just briefly concerned, what is why the explanation of these documents will be provided right in the text.

One of the essential points in the field of development of protection of prisoners human rights, is that rules must reflect to changes made in penal policy, practice and dynamics of the development in prison management. Time is going further and that was treated as normal treatment of prisoners fifteen years before, today could be treated as violation of article 3, article 8 or any other article of the ECHR.

Unfortunately, until the present moment enjoyment of the protection of human rights is poorly organized in practice. Despite of the fact that the European Convention on Human Rights is in force already long time, still in many countries prisoners are subjected to abuse and ill-treatment. Hygiene issues, adequate medical assistance, prevention of physical violence by the prison workers, providence of the access to the court system and legal assistance, right to family, right to vote are still not well regulated.³⁹ As a prove of this statement could be considered reports of CPT, which stated that protection of prisoners' human rights should be revised in most of the countries, Estonia is not an exception.

In present thesis human rights of the prisoners, that are granted by the ECHR and are additionally protected by other international documents, but are limited in reality in disproportionate way will be analyzed. Moreover, possible consequences of such limitations will be discussed further in the thesis.

³⁸ UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249, available at: <http://www.refworld.org/docid/3ae6b3970.html> (accessed 14 April 2016)

³⁹ Ma,Jue., *supra*.n.23, p 57.

3. Justified limitations of Human Rights in Prison

As it was mentioned earlier, protection of prisoners rights started to grow with the encouragement of the ECHR. Today, nobody doubts the fact that prisoners should also have an opportunity to enjoy human rights. It is absolutely reasonable that full enjoyment of human rights for prisoners can not be provided. There are human rights what are violated during the imprisonment and it is absolutely justified. However, in order to decide where the limitation of prisoners' human right is justified or not, answers for the following questions should be found: Is it in accordance with law? Does it pursue a legitimate aim? Is it necessary in democratic society?⁴⁰ The author of the thesis provides a brief overview of two human rights, which in prison can not be fully guaranteed and are usually limited.

3.1. Freedom of movement

Freedom of the movement is protected by the Article 2 of the Protocol no. 4 of the ECHR⁴¹

Movement of prisoners is strictly limited to the prison. International law accepts this limitation, only in case if it was made with respect to procedure established by law.⁴²

Such restriction is approved, because one of the main obligations of the prison is to assure discipline and to provide safety for prisoners and prison officers. Prisoners can be isolated from each other in order to prevent situation of total misbehavior and violence.

Prisoners can serve a sentence in total or partial isolation. Prison officers are entitled to decide how to restrict prisoners' movement. They should decide to which extent a concrete prisoner should be restricted in movement. However, such decision should be based on the security requirements. Moreover, such decision should be justified, unavoidable and proportionate. If prisoner behavior shows that he can affect the security and safety of prison in a negative way,

⁴⁰ Kilkelly, U. *The right to respect for private and family life: a guide to the implementation of Article 8 of the European Convention on Human Rights. Human rights handbooks, no.1.* Council of Europe, 2001, pp 25-27, available at: [http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-01\(2003\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-01(2003).pdf) (accessed at 3 April 2016)

⁴¹ Protocol No. 4 to the Convention for the protection of the Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto. Strasbourg, 16.IX.1963, Protocol no.4, art 2.

⁴² O'toole, S. and Eyland, S., *supra*.n.12, p 72.

such a prisoner should be isolated. Such measures can be used until the threat disappears completely.⁴³

Moreover, “any decision regarding segregation, transfer, reclassification or suspension of conditional release needs to be in accordance with the least restrictive measures consistence with the public safety and the principles of fundamental justice.”⁴⁴

3.2. The Right to privacy

Right to respect for private and family life is protected by the Article 8 of the ECHR. According to Article 8 everyone has the right to respect for his private and family life, his home and correspondence.⁴⁵

Violation of right to privacy is also often justified with respect to prisoners. However, such right could not be violated completely. Some privacy rights should also be guaranteed to prisoners. Violation of prisoners right to privacy should be proportionate and can be violated in case of prisons legitimate interest and in order to provide safety for prison officers as well as for other prisoners. It is absolutely justified to have cameras, monitoring and alarm systems in prison. Moreover, the search of prisoners is allowed if it is legally justified and made in accordance with the law and rules. Prison should prevent escapes and coalitions of the prisoners, who can organize an escape or an attack on prison officers.⁴⁶ For the same reason prison officers are allowed to monitor telephone calls and letters. Also correspondence should be checked, because necessary to exclude the opportunity to transfer forbidden items, especially drugs and guns.⁴⁷

Consequently, the right to privacy can be violated only if it is justified by providing safety and discipline in the prison.

The ECHR does not provide the full list of data protection in any article.⁴⁸ However, according to the ruling of the ECtHR in the case *Amann v Switzerland*⁴⁹ it was stated that “the storing of

⁴³ O’toole, S. and Eyland, S., *supra*.n.12, pp 72-74.

⁴⁴ *Ibid.*, p 72.

⁴⁵ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, *supra*.n.4, Article 8

⁴⁶ O’toole, S. and Eyland, S., *supra*.n.12, p 73.

⁴⁷ *Ibid.*, p 73-75

⁴⁸ Kosta, V. *Fundamental Rights in EU Internal Market Legislation*. Florence: European University Institute, 2013, pp 91-95

⁴⁹ *Amann v. Switzerland*, App no. 27798/95, 16th February 2000, European Court of Human Rights [ECtHR]

data relating to the private life of an individual falls within the application of the Article 8 (1) the ECHR.”⁵⁰

In case *Wisse v Hungary*⁵¹ the ECtHR analysed to what extent prisoners right to privacy could be limited. The applicants filed the complaint that their conversation in the prison visiting room was recorded, stating that it violates their right to privacy, which is granted by the Article 8 of the ECHR. The ECtHR found that violation of Article 8 took place in present case. Moreover, the the Court underlined that the French law did not provide information to what extent prisoners right to privacy could be violated. The Court stated that “...systematic recording of conversations in a visiting room for the purposes other than prison security deprived visiting rimes of their sole, namely to allow detainees to maintain some degree of private life, including privacy of conversation with their families.”⁵²

The right to privacy concerns not only the correspondence with family members, but other people as well. For example, in the case *Niedbala v. Poland*⁵³ applicants letter to the ombudsman was taken away and delayed. According to the applicants’ opinion, Article 8 were violated in regard to him. The ECHR also decided that in regard to the prisoner Article 8 of the ECHR was violated.

Freedom of movement and right to privacy is strictly are connected to the protection of safety and discipline in prison, what is why, derogation of these rights can be justified if it is proportionate and has a legitimate aim.

⁵⁰ Kosta, V., *supra*.n.48, p 92

⁵¹ *Wisse v France*, App no. 71611/01, European Court of Human Rights [ECtHR]

⁵² *Ibid.*, and *Personal data protection*. Factsheet February 2016 available at:

http://www.echr.coe.int/Documents/FS_Data_ENG.pdf, accessed at 30 March 2016

⁵³ *Niedbala v. Poland*, App no. 27915/95, 4th July 2000, European Court of Human Rights [ECtHR]

4. Unjustified limitations of the prisoners' rights protected by the Article 3 of the ECHR

The prohibition of torture is one of the most commonly discussed topics with respect to prisoners' human rights. As it was mentioned before, the ECHR as well as other legal acts pay attention to this topic and provide protection for prisoners' human rights. For example, principle 6 of Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment⁵⁴ states that "no persons under any form of detention or imprisonment shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment. No circumstances whatever may be invoked as a justification for torture or degrading treatment or punishment."⁵⁵ Despite the fact that protection for prisoners rights provided by many legal documents, the author of the present thesis will concentrate, on the unjustified limitation of prisoners human rights under Article 3 of the ECHR and on the analysis of possible consequences it can have both for prisoner as for society as a whole.

Article 3 of the ECHR states: no one shall be subjected to torture or to inhuman or degrading treatment or punishment.⁵⁶ In regard to Article 3 of the ECHR, any exceptions or derogations are not allowed and in this case, prisoners have identical rights with people outside the prison.⁵⁷

As it was mentioned earlier, derogation on prisoners right to liberty is already a punishment for a committed crime and prison officers can not decide on their own if prisoners need extra punishment in consist of violation of other prisoners' human rights or not. Despite this, prisoners are often subject to ill-treatment and degrading treatment or punishment, they can not protect themselves and are often suffer from the violence of prison officers.⁵⁸ Such attacks on prisoners often happen in the countries where is a common belief that imprisonment is the way to make prisoners suffer for the committed crime and prisoner should suffer as much as possible. In these countries the discussion of of prisoners rights protection is not in the governmental

⁵⁴ UN General Assembly, *Body of Principles for the protection of All Persons under Any Form of Detention or Imprisonment*: resolution adopted by the General Assembly, 9 December 1988, A/RES/43/173, available at: <http://www.refworld.org/docid/3b00f219c.html> , accessed at 8 April 2016

⁵⁵ *Ibid.*, Principle 6.

⁵⁶ Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, *supra*.n.4, Article 3

⁵⁷ Hall, CH. "Prisoners Rights in International Law: The impact of the European Convention on Human Rights.", *South African Yearbook of International Law*, vol.11,1985, pp 85-90

⁵⁸ Coyle, A. *Managing prisons in a time of change*. United Kingdom: International Centre for Prison Studies, 2002, p 28

interests, despite the fact that international law has fully banned torture and inhuman treatment or punishment of prisoners.⁵⁹

The question like what protection prisoners can receive prisoners in regard to their rights provided by Article 3 of the ECHR, and what is the difference between torture, inhuman or degrading treatment will be analysed in the present chapter.

Article 3 was used and is still in use in order to find the compatibility between prisoners' treatment conditions and human rights standards. Article 3 of the ECHR in relation to prisoners should provide protection from violence, maltreatment and should enforce the Member States to provide adequate detention conditions, which do not violate prisoners' human rights. It includes the following aspects: providence of regime activities, adequate access to a toilet, medical assistance, right to serve a sentence in a not overcrowded cell, right to save other rights which are granted by the ECHR at the time of deprivation of liberty.⁶⁰

Article 3 comprises several words, which should be understood correctly. In order to provide a common understanding the ECtHR explained in *Ireland v. United Kingdom* the difference between torture and inhuman or degrading treatment or punishment. According to this court decision, there are three categories of ill-treatment. The first is "torture (deliberate inhuman treatment causing very serious and cruel suffering), the second one is inhuman treatment (treatment that causes intense physical and mental suffering) and the third one is degrading treatment (treatment, which causes in the victim a feeling of fear, anguish, and inferiority capable of humiliating and debasing the victim and possibly breaking his or her physical and moral resistance)."⁶¹

This is a starting point for the discussion of applicability of Article 3 of the ECHR to a particular case. The scholar Jeam Murdoch came to a conclusion that there are several questions in the application of Article 3 of the ECHR. First of all, in order to consider a violation of Article 3, a minimum level of suffering, which a prisoner has during the degrading treatment or punishment. Another question is "what is the appropriate label to be applied to the treatment or punishment".⁶²

That is why in some case is easy to determine that the prisoner was tortured or treated inhumanly or suffered from the degrading treatment or punishment, but in some cases it is difficult.

⁵⁹ Coyle, A. (2002), *supra*.n.58 pp 35-40.

⁶⁰ Roscam, H.A., *supra*.n.17, p 9.

⁶¹ *Ireland v. United Kingdom*, App no 5310/71, 18th January 1978, European Court of Human Rights [ECtHR].

⁶² Murdoch, J. *The treatment of prisoners European Standards*. Strasbourg, France: Council of Europe, 2006, pp 113-115.

For example, in case *Aksoy v. Turkey* in 1996 the Court came to the conclusion that in the relation to prisoner was violated Article 3 of the ECHR. Degrading treatment consists in following: prisoner was leaved naked, his hands were tied behind his back, and he was strung up by his arms. While he was hanging, the police connected electrodes to his genitals and inflicted electric shock. Obviously that such treatment is a violation of Article 3.

However, were in practice cases there were very difficult to identify does the violation exist or not. For example, case, which were judged by the Supreme Court of Estonia in 2012, number of the case is 3-3-1-32-12⁶³. Facts are following: applicant provided an application 11th November 2010 to Tartu Prison for compensation for damages, on the basis that he was fully searched in the prison corridor (in stairs) on the eyes of other prisoners and prison officers. Complainant found that such act could be treated as degrading treatment. As a consequence, prisoner suffers from stress and prostration. The prisoner asked for degrading treatment, compensation in the amount of 1597,79 euro.

Tartu prison decided to do not satisfy the prisoners application. Prisoner field the application to the Tartu Administrative Court on the same facts and explanations. Tartu Administrative Court provide the decision that in relation to the prisoner did not violated Article 3 of the ECHR and no compensation of damages should be provided for him. Administrative Court found that as degrading treatment could be considered only these sufferings, which are not in the list of unavoidable sufferings on the time of deprivation of liberty. Prisoner appeled the decision of the Tartu Administrative Court in Tartu Circuit Court, which had leaved decision of the Tartu Administrative Court unchanged. Prisoner turned to the Supreme Court of Estonia, which also did not change the decision of previous instance. Supreme Court told that rule that comes from Imprisonment Act § 68 part 1⁶⁴ were fulfilled correctly. Prisoner was searched by prison officers, who were of the same sex. Imprisonment act does not provide an exact number of prison officers who could searching the prisoner at the same time or provide security at the time of searching. However, according to regulation of Ministry of Justice nr. 23⁶⁵ with respect to prisoner's detention conditions prisoner should be searched in place, which guarantee privacy. According to Court reasoning privacy is fully dependent from the circumstances, which caused the necessity of the searching. In the present case existed a suspicion that the prisoner had prohibited

⁶³ RKHKo 3-3-1-32-12, 2012.

⁶⁴ Estonian Imprisonment Act, RT I 2000, 58, 376, 2000. Article 68 states: "In order to discover prohibited items or substances, prison service officers have the right to search prisoners, their personal effects, dwellings, non-work rooms, other premises and the territory of the prison. A prisoner shall be searched by a prison officer of the same sex as the prisoner."

⁶⁵ Justiitsministri 01.04.2003. a määrus nr 23 „Vangistuse ja eelvangistuse täideviimise üle järelevalve korraldamine” 224 § 47 lg 2.

in prison items and prison officers absolutely reasonably decided to search prisoner on the stairs.⁶⁶

However, one of the judges Tõnu Anton from the collegium of Judges provide his individual opinion. According to opinion of judge Tõnu Anton searching should be made in place, which guarantee privacy to the prisoner. In the present case, right was derogated from the prisoner without any serious reason for this. Such actions of prison officers could be treated as a violation of Article 3 of the ECHR in regard to the prisoner.⁶⁷

Exists in this case violation of Article 3 of the ECHR or not could not unanimously decide even judges of the Supreme Court. In the opinion of the author of the present thesis principle of proportionality should clarify in a certain way the situation. Is it true, that the danger from the action of the prisoner was so high that right for private search could be derogated? Author of the thesis, would rather agree with the position of judge Anton Tõnu, which stated that right of the prisoner was derogated without any serious reason and such action of the prison officers incompatible with proportionality principle. Also analysis on the grounds was the aim of the prison officers legitimate or not should be made. According to the opinion of the author of the thesis aim of the prison officers could be legitimate if the level of threat could harm the safety and discipline in the prison. In present case, the level of threat was not in the high level and prisoner right to private search was limited in disproportionate way.

Consequently, violation of Article 3 with respect to prisoners' human rights exists in this case.

Moreover, this case is interesting in the boundaries of present thesis, because it simultaneously combines violation of Article 3 and violation of Article 8. Here right to privacy, which were discussed under the chapter of justified limitations of prisoners' human rights, discussed from other perspective. Basically, in this case such serious violation of prisoners right to privacy was interpreted as a degrading treatment of the prisoner.

Another case, which also was decided by Estonian Supreme Court, where is also hard to decide precisely existed violation of Article 3 of the ECHR in regard to prisoner or not.⁶⁸ Prisoner provided a complaint to the Viru Prison for compensation for damages for violation of his rights, which are granted by Article 3 of the ECHR. Prisoner served his sentence for some time in a cell, where was broken window. In cell with broken window was extremely cold. Episode took place

⁶⁶ RKHKo 3-3-1-32-12, 2012, p. 13.

⁶⁷ Riigikohtunik Tõnu Antoni eriarvamus halduskolleegiumi otsusele haldusasjas nr 3-3-1-32-12, 2012, available at: <http://www.nc.ee/?id=11&tekst=222551520>.

⁶⁸ RKHKo 3-3-1-41-10, 2010.

in the end of the March. Moreover, because of the fact that he afraid, that this window could fall down on his body, he could not properly sleep. Prisoner counted that Estonian government should compensate to him 4 793,40 euro. Viru prison did not satisfy prisoner complaint. Prisoner decided turn to the Tartu Administrative Court. Prisoner complaint was unsatisfied. Then prisoner appealed Tartu Administrative Court Decision in Tartu Circuit Court. Prisoner's appeal was satisfied. Court made a new decision, which stated that State should pay compensation of damages to prisoner in the amount of 223, 69 euro. Court came to the conclusion that cell should have acceptable conditions of living standards. Broken window in the cell could not be counted as a normal condition of living standard. That's why such negligence in providing proper living conditions should be treated as a violation of Article 3 of the ECHR. Moreover, causal connection between broken window and prisoner's thereafter health problems could be easily followed. Despite of the fact that it is not strait forward violation of article 3 of the ECHR and despite of the decision of Tartu Administrative Court and Tartu prison, Tartu Circuit Court made a positive decision.

These cases were provided in order to demonstrate that violation of prisoners rights granted by article 3 are not straightforward, many factors are taken into account at the time of preparing a decision. Moreover, level of prisoner sufferings also is taken into account by judges. That is why limitation of prisoners human rights granted by the Article 3 of the ECHR is discussed topic today, where is difficult to find the line between degrading or appropriate treatment of prisoners. Despite on the fact that limitations on prisoners human rights, granted by the Article 3 could not be justified by the level of economy or ability of financial resources, still the differentiation exists.

4.1. Treatment of prisoners in the past and nowadays. The analysis of the how interpretation of Article 3 of the ECHR has changed thorough the time

Is it true that if a person is arrested, he automatically became a slave? Nowadays it is difficult to imagine such situation. However, were times, then becoming a prisoner meant becoming a slave. According to the research of Loreona O'neil prisoners before 1960 are often being subject of slavery in the USA.⁶⁹ Moreover in case *Pervear v. Massachusetts*⁷⁰ in 1866 the USA Supreme Court came to the conclusion that prisoners have no constitutional rights. Further Virginia Court

⁶⁹ O'neil, L. "The prisoners' rights movement of the 1960s" *ZY: What happened and why it matters*, 2014, available at: <http://www.ozy.com/flashback/the-prisoners-rights-movement-of-the-1960s/30583>, (accessed on 17 December 2015).

⁷⁰ *Pervear v. The Commonwealth*, 72 U.S. 5 Wall. 475 475 (1866).

in 1871 named prisoner as “slave of the state”.⁷¹ According to the research, such treatment of the prisoners for a long time lead to the situation that exists now: overcrowded prisons, high level of reoffending and poor reintegration of prisoners. Of course today situation in the field of protection of prisoners right differs from the 1860. However, the progress is not sufficient⁷².

Protection of prisoners Human Rights in the USA started from the case of *Cooper v Pate*⁷³. After a publication of a decision constitutional professor James B. Jacobs emphasized attention to this case and told “it left no doubt that prisoners have the rights that must be respected.”⁷⁴ From that times, active protection of prisoners human rights was started, many cases were filed. Scholar Ken Kerle told that since 1960-1970 attention of the United States to the protection of prisoners human rights grew.⁷⁵

Understandable, that level of protection and enforcement of prisoners’ human rights are changing through the time in Europe also. As was mentioned great development of the world had changed living standards significantly, especially in comparison with period after WWII. It affected positively on the living conditions of the prisoners.

True that initially Article 3 was applicable only to serious forms of inhuman and degrading treatment or punishment and now meaning of serious forms of inhuman and degrading treatment or punishment is changed. That was normal 60 years ago, now could be treated as a violation of Article 3 of the ECHR. Because of the fact that minimum living standard are changing prisoners minimum living standards are also changing. Some examples will be discussed further.

Good demonstration of the fact that attitude to violation of Article 3 is changing through the time are cases *Kröcher and Möller against Switzerland 1983* and *Varga and Others v. Hungary 2015*. In case *Kröcher and Möller against Switzerland* prisoners were kept in cells, which had access only to artificial light and had no access to natural light. The connection with the outside world was fully forbidden. For example, they had no access to books, newspapers, radio, television. Out of their cells, they could spend only 20 minutes per day and five days a week. The court analyzed the case and made a conclusion that there was no inhuman and degrading treatment.

Contrary case *Varga and others v. Hungary* prisoners complained for overcrowded cells, approximately to each prisoner was dedicated approximately 2,25 m² of floor space. Also the

⁷¹ No one wrote me. “Legal Rights of Prisoners – The beginnings of Prisoners rights. Law civil rights era.” available at: <http://law.jrank.org/pages/1762/Prisoners-Legal-Rights-beginnings-prisoners-rights-law-civil-rights-era.html>

⁷² Ibid.

⁷³ *Cooper v. Pate*, 378 U.S. 546 (1964).

⁷⁴ O'neil, L., *supra*.n.69.

⁷⁵ Ibid.

quality of food was not sufficiently good. He could spend outside the cell only 30 minutes every day. Prisoner has also added that he spent 11 days in solitary confinement, which was only 8 m², as punishment for misbehavior. The ECtHR came to conclusion that there was a violation of Article 3 in regard to the Varga.

Another pair of examples, in 1978 the Court decided that spending a night in a filthy cell containing a stale urine and faeces of an earlier occupant is not the violation of Article 3.⁷⁶

In case *Peers v Greece*⁷⁷ the Court held that “that the detention of a prisoner with a fellow prisoner in a cramped cell which had little natural light and no ventilation and which had an open toilet, which often failed to work, and where he had been provided with no access to vocational courses or activities or a library, gave rise to feelings of anguish and inferiority capable of humiliating and debasing the prisoner, thus amounting to degrading treatment within article 3.”⁷⁸

These cases demonstrate what within 20-30 years treatment of the prisoners has changed significantly and minimum living standards in prison had grown. Also it shows that contemporary decisions of the ECtHR do not treat any more the aim of imprisonment as a revenge. Modern judgments also provide the explanation that aim of the imprisonment were reviewed long time ago, what is why decision of 20 years old are significantly differ from the decision of the last decade.

What could be treated as unjustified limitation prisoners’ rights granted by Article 3 of the ECHR in last decade?

Through the analysis of the ruling of the ECtHR judgments could be made a conclusion that in order to decide justified limitation or not, difference between unsatisfactory and illegal treatment conditions should be understood.

For example in case *Valasinas v Lithuania*, where the applicant complained on overcrowding, bad washing and sanitary conditions, poor catering, inappropriate access to medical assistance and very limited number of activities for prisoners, the ECtHR found that “these conditions did not attain the minimum level of severity required to amount to degrading treatment with the meaning of Article 3, because the treatment had to go beyond the level that was inevitable upon legitimate punishment.”⁷⁹ So basically it means, that there is a very thin thread between the

⁷⁶ *Kotalla v Netherlands*, App no 7994/77, 6th May 1978, European Court of Human Rights [ECtHR]

⁷⁷ *Peers v Greece*, App no 28524/95, (2001) 33 EHRR 51, 10 BHRC 364, 2001 LR 245, IHRL 3096 (ECHR 2001), 19th April 2001, European Court of Human Rights [ECtHR].

⁷⁸ Foster, S.H. “Prison conditions, human rights and Article 3 ECHR.” *Public law*, 2005, spr, pp 35-44.

⁷⁹ Foster, S.H. (2005), pp 35-44.

unsatisfactory and illegal treatment and it is absolutely impossible to say that certain violation could be treated as violation of Article 3 or not, because the ECtHR take into consideration all circumstances of the case, for example continuance of such treatment, physical and mental health, sex, age and others.⁸⁰ Basically speaking above was analyzed by author of the thesis two cases *Peers v Greece* of 2001 and *Valasinas v Lithuania* of 2001, where description of the facts was pretty the same, but the Court provide absolutely contrary decisions and even small details could play a crucial role in deciding the question was or was not prisoners human right granted by the Article 3 of the ECHR violated.

Understandable, that facts of each case differs from another, but by the analysis of the ECtHR case law could be seen a systematic development of protection of prisoners' human rights.

Moreover, in order to help to understand to prisoners as well as to governmental institutions understand what could be treated as violation of article 3 and what could not, CPT is making researches, analyses and reports, where they are explaining problems of the prisons. On the basis of these problems, prisoners could ask a compensation for the damages from the government.

According to the made research of the cases in this field as well as scholars contributions to the case, could be made a conclusion that prisoners' dignity should be respected and in order to guarantee this, state should follow their obligation to provide for the prisoner's accommodation and bedding, hygienic conditions, cloths, food and out of cells activities.⁸¹ It is impossible to put prisoner into inadequate living conditions and justify it as an additional punishment for committed crime. As was mentioned several times in present thesis imprisonment is already a punishment, no additional punishment allowed to be imposed.⁸²

Providence for prisoners adequate living conditions is hot topic today, especially in the countries with the weak economic, where people outside the prison are also living in terrifying condition. In this situation, society and State argue that it is inappropriate to provide for prisoners better living conditions than people outside the prison have.⁸³ However, scholar Coyle came to conclusion that if the State take on itself the right to take liberty of person, so State should be obliged to provide adequate living conditions for this person.⁸⁴ Throught the research the author of the thesis came to the same conclusion, that prisoners as well as people outside the prison are entitled to be protected by the ECHR.

⁸⁰ *Peers v Greece, supra.n.79.*

⁸¹ O'toole, S. and Eyland, S., *supra.n.12*, p 74.

⁸² *Ibid.*, p 74.

⁸³ Coyle, A. (2002), *supra.n.58* pp 35-40.

⁸⁴ *Ibid.*, pp 11-15.

The refusal of the states to respect prisoner's human rights is not the new in the world. Prisoners long time fought for right to procedural justice in a disciplinary proceeding, the right to legal and personal correspondence, the right to marry and found a family and their fight brought some results. Consequently, the fight for prohibition of unjustified limitation of prisoners human rights followed from the Article 3 of the ECHR should bring results.⁸⁵

4.2. Unjustified limitations of prisoners' right to healthcare

Article 3 of the ECHR covers issues of healthcare of the prisoners. Opportunity to receive medical care should enjoy every member of society and in the democratic society state should provide adequate opportunity to enjoy medical assistance and prisoners should not be an exception.⁸⁶ Prisoners should have the same right as everyone in the society outside have with respect to healthcare. Only difference that exists is that prisoners could not by themselves organize proper medical assistance, because of deprivation of liberty and in this case state should bare responsibility of providence of adequate medical assistance for prisoners. Prison authorities obliged to provide for prisoners: "provision of adequate health care services and medicines, as far as possible free of charge, information and education about preventive health measures and healthy lifestyles, implementation of elementary preventive health measures, means for detecting sexually transmitted infections and for treating them in order to reduce risk of HIV transmission, continuation of medical treatments begun outside (including these for drug users) or the possibility of commencing them inside."⁸⁷ Furthermore, prisoner should not have worse health at the time of release than then he entered.⁸⁸ Essential point that was marked is that negligence in providing medical assistance to the prisoners could not be justified even in case of insufficient amount of financial means.⁸⁹ Of course it is ideal theory and in practice much harder imply these norm, when resources of the country are very limited, but it is reference point where necessary to move.

In case *Pakhomov v. Russia* Court stated: "... authorities must ensure that the diagnosis and care are prompt and accurate, and that where necessitated by the nature of medical condition supervision is regular and systematic and involves a comprehensive therapeutic strategy aimed at

⁸⁵ Foster, S. "The prisoners right to vote and the Voting Eligibility (Prisoners) Draft Bill 2012" *Coventry Law Journal*, nr 18 (1), 2013, pp 131-136.

⁸⁶ Roscam, H.A., *supra*.n.17, p 5.

⁸⁷ Reyes, H. "HIV in prisons: a reader with particular relevance to the newly independent states." *World Health Organization-Europe "HIPPP"*, 2001, pp 9-18.

⁸⁸ Moller, L. and Stover, H. and Jurgens, R. and Gatherer, A. and Nikogosian, H. *Health in prisons: a WHO guide to the essentials in prison health*. World Health Organization, Copenhagen, 2007, p 7.

⁸⁹ Roscam, H.A., *supra*.n.17, p 6.

curing the detainees health problems or preventing their aggravation.”⁹⁰ Moreover, UN basic principles for the treatment of prisoners states that: “prisoners should have access to the health services available in the country without discrimination on the grounds of their legal situation”.⁹¹

In case *McGlinchey v United Kingdom*⁹² the ECtHR issued that provision of inadequate medical assistance for drug addicted prisoners could be treated as a violation of Article 3 of the ECHR, if a causal link between sufferings and non-providence of appropriate medical assistance has proven. This case underlines that State should provide medical assistance for the prisoners, especially to vulnerable inmates with drug problems.

Unfortunately, reports show that providence of adequate medical assistance is not ideal and prisoners right to medical assistance limited in unjustified way. The report (2008) of the Directorate General for Health and Consumers on prevention, treatment and harm-reduction services in prison shows that exist the lack of systematic prisoners’ health control, especially of drug addicted prisoners and of prisoners with inflectional diseases. Research in the field of healthcare of prisoners shows that women have more health problems in prison, than man. Unfortunately, economic situation in prisons do not have enough sources in order to take into account the specific needs of the woman.⁹³

According to the report of CPT 2012 in Estonian prisons and detention houses also exist the problem of providing to the prisoners timely and necessary medical assistance. For example, in Rakvere Detention House took place inappropriate case. Detainee with wounds could receive help of the health-care stuff only at Monday, despite of the fact that he arrived on Saturday. These days, that he spend in waiting of the doctor he spent in pain.

The question of medical assistance is highly important as for prisoner as for society outside the prison. As was mentioned above government obliged to provide adequate medical assistance to the prisoners and violation of prisoners right to healthcare brings consequences, which will be discussed in the end of the subchapter dedicated to right to healthcare.

Under following subchapters will be discussed groups of the prisoners who are entitled of special attention as in prison as outside the prison and ill-treatment of them considered as violation of

⁹⁰ *Pahkomov v. Russia*, App no 44917/08 (first section), 30th September 2010, European Court of Human Rights [ECtHR].

⁹¹ UN General Assembly, *Basic Principles for the Treatment of Prisoners: resolution/adopted by the General Assembly*, 28 March 1991, A/RES/45/111, available at: <http://www.refworld.org/docid/48abd5740.html>

⁹² *McGlinchey v United Kingdom*, App no 50390/99, 2003, European Court of Human Rights [ECtHR].

⁹³ Watson, R., Stimpson, A. and Hostick, T. “Prison healthcare, a review of the literature.” *International Journal of Nursing Studies*, vol. 41, 2004, p 124.

Article 3 of the ECHR. Some examples of ill treatment of these prisoners, which should be under special attention will be discussed in the next sub-chapters.

4.2.1. HIV+ prisoners

In Europe, level of HIV infection in the boundaries of prison is higher in several times than outside the prison. The risk of HIV transmission in prison is at high level. Tattooing in “homemade” conditions, needle sharing, sex and rape provide spreading of HIV in prison. Moreover, overcrowding, stressful situations, rape and violence affect incredibly badly on prisoners' immune system⁹⁴. Elementary protection for these prisoners should be definitely provided: additional protection for prisoners in the risk group, such as these who are HIV-positive, from violence from other prisoners, isolation from these with infectious diseases, such as tuberculosis, which could be extremely dangerous for them.”⁹⁵

4.2.1.1. Treatment of HIV+ in prison

Unfortunately, despite the fact that there are in definitely HIV+ prisoners in prisons and that HIV is really serious illness, not every prison in Europe and even in the United States could provide adequate medical treatment for infected prisoners. It is often complicated for prisoners to receive proper medical assistance as there is no specialists who could deal with this illness employed in prisons. Queue to the doctor could last several months. Such treatment of HIV+ prisoners could violate Article 3 of the ECHR.

Scholars also concerned about the question of spreading HIV in prisons, because if prisoners infected each other in prison, in future, after release they will spread HIV outside the prison. This is serious issue that countries should decide as soon as possible, because the risk of spreading disease outside the prison is in a really high level.

Scholar Tuli Karunesh provided his vision how it is possible to minimize cases of HIV transmission. It is possible to predict that best solution is to prohibit sex between prisoners at all. However, it is impossible. According Tuli Karunesh opinion better spread between prisoner's

⁹⁴ UN Joint Programme on HIV/AIDS (UNAIDS), The Gap Report, 2014, available at: <http://www.refworld.org/docid/53f1e1604.html> (accessed at 12 February 2016).

⁹⁵ Tartaro, C. and Levy, M.P. “An evaluation of an HIV testing program in the jail setting: results and recommendations.” *The Prison Journal*, vol. 93(1), 2013, pp 57-65.

condoms and promote healthy sex.⁹⁶ For example, in Estonia condoms are free in long-term visiting rooms.⁹⁷ Moreover, voluntary testing with proper consulting should be guaranteed to prisoners. Special attention should be dedicated to prisoners, who's test result was negative, it is necessary at least once a year inform them that retesting is essential.⁹⁸

Estonian Authorities have the same opinion and they try to control cases of HIV+ prisoners. Despite of the fact that the HIV test is not obligatory in Estonia it is highly promoted in the boundaries of the prison. Prisoners are always welcomed for testing HIV in prison. The reason of this is that Estonia is in a third place of the HIV diagnoses in Europe, on the first place is Russia and on the second is Ukraine. In Estonia HIV/AIDS prevention is organized according the national HIV/AIDS Strategy 2006-2015, the main goal is to stop spreading of the disease outside and inside the prison.⁹⁹

Under special attention is risk group, which consist of drug addicted prisoners, prostitutes, homosexual and pregnant woman. Moreover, Estonia bought special fast-tests in order to simplify the proceeding. According to the opinion of Elo Liebert (adviser of Social Welfare Department of the Ministry of Justice) Estonian Authorities are trying to enforce prison officers to motivate prisoners to test for HIV. Especially motivation should be made in time, when person come to prison and then prisoner released, in order to see statistics of transmission of HIV in prisons.¹⁰⁰ Even the CPT report showed that treatment and screening of HIV/AIDS is conducted according to norms.

As was mentioned it is highly important to minimize cases of HIV transmission in the boundaries of prison. For a present moment reports show that level of transmission of HIV in prison is at high level. Obvious that states try to find a solution to this problem. In opinion of CPT Estonia made sufficient work in this field and try to control the transmission of HIV in prison in the right way. Research in this field shows that HIV prevalence in prisons reduced.¹⁰¹

⁹⁶ Karunesh, T. and Kerndt, P. "Preventing Sexually Transmitted Infections among Incarcerated Men who have sex with men: A Cost-Effectiveness Analysis." *Sexually Transmitted Diseases*, vol. 36 (2), 2009, issue 2, pp S41-S48.

⁹⁷ Kivimets, K. and Uusküla, A. "HIV testing and counselling in Estonian prisons, 2012 to 2013: Aims, processes and impacts." *Eurosurveillance*, vol. 19 (47), 2013, available at:

<http://www.eurosurveillance.org/ViewArticle.aspx?ArticleId=20970>

⁹⁸ Ibid.

⁹⁹ Ibid.

¹⁰⁰ Ibid.

¹⁰¹ Ibid.

4.2.1.2. Justified or unjustified limitation of the right to confidentiality with respect to HIV+ prisoners

Essential issue under the HIV transmission is right to confidentiality and in society is under debate the topic of the confidentiality right of HIV+ prisoners. The right of confidentiality of HIV+ people is on an extremely high level. So, should prison provide protection of this right or this right could be neglected in prison? Do the doctors inside the prison have the same moral statutes as a doctor outside the boundaries of the prison? Doctor in prison is first of all prison offices. It means that besides moral statutes of the medical profession, doctors in prison have very concrete and special obligations, which comes from the law and prison organizational acts. These obligations based on the providence and protection of safety and discipline in prison.¹⁰² With respect of it, should the doctor keep information about the prisoner disease in secret or confidentiality right could be violated in regard to protection safety in prison.

For example, if the doctor knows that prisoner A is HIV+ and he has close relation with prisoner B and exists risk of A and B sexual interaction. Could doctor tell to prisoner B, that prisoner A is HIV+, in order to minimize risk of transmission and by this protect safety in prison or not¹⁰³? Moreover, doctor must explain to prisoner A how the HIV could be transmitted and consequences of illnesses.¹⁰⁴ However, if doctor will decide to protect right to confidentiality of A and do not forward information to prisoner B, doctor could be liable for negligence in regard to prisoner B.

According to the opinion of scholar Beaupre right to confidentiality could be violated in the boundaries of the prison in case of HIV.

Through the analyses of the academic articles of scholar Beaupre and scholar Tuli Karunesh author of the thesis came to the conclusion that the question of the prevention of HIV transmission is more essential than the right to confidentiality. Basically, it means that right to confidentiality of HIV+ prisoners could be limited in prison. All scholars in this case use the proportionality test. If the doctor will not limit right to confidentiality of prisoner and keep information in secret, it could lead to unlimited transmission of HIV as in prison as outside the prison. Basically, it will lead to more sufferings, than prisoner will have if his right to confidentiality will be violated. HIV/AIDS is really dangerous disease and spreading of this in

¹⁰² Beaupre, M. "Confidentiality, HIV/Aids and prison health care services." *Medical Law Review*, vol. 2 (2), 1994, pp 157-159.

¹⁰³ *Ibid.*, pp 157-159.

¹⁰⁴ *Ibid.*, pp 157-159.

the boundaries of prison should be limited as much as possible in order to protect society outside and inside the prison, what is why limitation of right to confidentiality could be justified.

4.2.2. Medical assistance for mentally disabled prisoners

Another group under the risk in prison is mentally disabled prisoners. Mental illness is one of the most serious problems in prison and treatment of mentally disabled prisoners also is covered by the Article 3 of the ECHR.

Some of the prisoners had mental illnesses already at the time of arriving in prison, in some cases mental illnesses are developing during imprisonment. Reasons of this are despair, poor detention conditions, torture, violence in prison and many other factors. Unfortunately often detention conditions have a bad effect on mental health and could cause suicide of prisoners.¹⁰⁵ Research, which was made in 2007 year showed that systematic mental health screening is rare in Europe.

How should be prisoners with mental problems treated in prison? Should they be in the same prison with mentally healthy prisoners or should they be isolated. Which mental problems could be treated enough serious for isolation.

Obviously, prisoners who have mental illnesses should be under control of prisoner psychologist and proper therapy should be provided. Moreover, if the illness progressing and mental disorder is already serious, prisoner should be treated in hospital.¹⁰⁶

In case *Kudla v. Poland* prisoner insisted on the fact, that he had chronic depression, that is why he tried twice to commit suicide. Moreover, he spent four years in detention on remand. According to the opinion of prisoner, in relation to him was violated Article 3 of the European Convention on Human Rights, because sufficient medical (psychological) treatment was not provided to him in detention. European Court of Human Rights find no violation of Article 3 of the ECHR. However, in decision Court underlined several essential details. For example, that State is obliged to provide medical help, if prisoners or people in detention on remand requested it.¹⁰⁷

In order to improve the quality of rehabilitation and decrease the level of reoffending it is necessary to provide for prisoners' adequate assistance of psychologist. Mentally ill people with

¹⁰⁵ Roscam, H.A., *supra*.n.17, p 15.

¹⁰⁶ *Ibid.*, pp.15-16.

¹⁰⁷ *Kudla v. Poland*, App no 30210/96, 2000, European Court of Human Rights [ECtHR]

obsession could bring to society serious treat and increase the level of reoffending. That is why it is necessary think not only about today situation and committed crime of the prisoner, but also about the future.

As was mentioned violation of prisoners rights to healthcare could bring additional consequences as for prisoners as for the whole society. Spreading of the diseases outside the prison, threat of violence of mentally unhealthy people after imprisonment effects negatively on the society. Basically it means what violation of legal norms by the State officials brings bad consequences to the welfare of society.

4.2.3. Future steps in protection of prisoners' health under the Article 3 of the ECHR

It should be noted that progress in the field of protection of health of prisoners could be followed. Mostly on this progress affected the development of the European judicial system (establishment of the ECtHR), EU and UN acts for the protection of prisoners' human rights, CPT visits and recommendations and changes in quality of life in the whole. However, changes that were made are not enough in order to guarantee to prisoner's protections of their human rights. Following steps should be made as soon as possible¹⁰⁸:

Firstly, necessary to provide timely medical services in order to prevent spread of the disease. Secondly, correct medical treatment should be provided.

Thirdly, quality of the medical services should not be worse than outside the prison.

Fourthly, opportunity to receive drugs (pills) should also be as much as possible the same as outside the prison.

Last but not least, adequacy of the medical treatment should be supervised and checked by the National Health Inspectorate or Ministry of Social Affairs.¹⁰⁹

Moreover, special attention should be emphasized on the mental health of the prisoners. It should be made for future socialization and affect on society. If a person is mentally unhealthy his socialization could not succeed and he is more likely commits a new crime. Accordingly, he affects on the welfare of society in a negative way. What is why prisoners' health issues should be part of public policy and could not be neglected. Moreover, the following idea should be

¹⁰⁸ Roscam, H.A., *supra*.n.17, p 5.

¹⁰⁹ *Ibid.*, p 5.

followed: that lack of medical assistance should not lead to death of the prisoner, because his punishment is deprivation of liberty, not the death penalty.¹¹⁰

Through the deep analysis of legal documents, research papers of such scholars as Beaupre, Roscam, Karunesh, Aiebert, Coyle, O'Toole, Kivimets, Usküla and several cases in this field, author of the thesis came to conclusion that each state should care of the prisoner's health, at least in the same level as of people's health outside the prison. Ideally, states should catch the clear understanding provided by the Committee of Ministers¹¹¹, that state should care about prisoner's health, because prisoners do not lose their human rights at the time of serving sentence. State take on itself right to take away peoples right to liberty, what is why State should guarantee that other human rights of the prisoners will be saved as much as possible. Moreover, torture, ill treatment and degrading treatment or punishment could not have any legal aim or pass the proportionality test. It should be strictly forbidden to use these methods in regard to prisoners.

¹¹⁰ Roscam, H.A., *supra*.n.17, p 6.

¹¹¹ Council of Europe, Committee of Ministers, *Recommendation No.R (98) 7 Concerning the Ethical and Organizational Aspects of Health Care in Prison*, 8 April 1998.

5. Unjustified limitation of the civil, political, economic and social rights in case of imprisonment.

Scholar George Bernard Shaw in his work *The Crime of Imprisonment* one of the first argued that despite on the fact, that society as such has a right to self-defense, it does not mean that society has right to punish everybody. George Shaw insisted on the fact that the level of the crime in society is showing the level of the sickness of society. If follow this theory, it is better to work with whole society and to improve sense of morality and common well-being instead of concentration on committed crimes.¹¹² This lead to the question – how to affect on prisoners in order to minimize the cases of reoffending and improve their reintegration into society outside the prison.

Answer is hidden in analysis of the purpose of the punishment and this issue will be discussed under the chapter of reoffending. In present chapter will be discussed questions of derogation of prisoners social, political, economic and cultural rights and the proportionality of these measures.

Analysis of cases of the ECtHR on the Article 3 shows that still prisoners' human rights are sufficiently and constantly violated. What is the reason of this? Why with the loss of the liberty prisoner automatically lose political, social, economic, cultural rights, right to health.

Basically it means that if a person commits a crime, for example robbery, he automatically lose his all natural and man-made rights? Is it fair in democratic society? Certainly it is arguable.

According to European Prison Rules rule 2: “loss of the right to liberty that prisoners suffer should not lead to the assumption that prisoners automatically lose their political, civil, social, economic and cultural rights as well. Inevitably rights of prisoners are restricted by their loss of liberty but such further restrictions should be as few as possible.”¹¹³ It means that other rights of prisoners could be restricted only in case of threat of good order, safety and security in prison. Such theory was developed by the scholar, Alexander Paterson, who was a prison reformer of the criminal system and of the penal system. Paterson is first who empathized that deprivation of liberty is already punishment in itself and no other additional deprivations should prisoners have.¹¹⁴

¹¹² Bedau, H.A. “Prisoners rights.” *Criminal Justice Ethics* , vol. 1(1), 1982, p 26.

¹¹³ Council of Europe: Committee of Ministers, Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, *supra*.n.5, rule 2.

¹¹⁴ Smit, D. and Snacken, S. *Principles of European Prison Law and Policy: Penology and Human Rights*. Oxford University Press, Oxford, 2009, pp 73-84.

Alexander Paterson came to this conclusion already long time ago and long time principle was under no attention. However, in 2005 Grand Chamber of the ECtHR made a decision in case *Hirst v United Kingdom*, where emphasized that “prisoners in general continue to enjoy all the fundamental rights and freedoms guaranteed under the Convention. Prisoners may not be ill-treated, subjected to inhuman or degrading punishment or conditions contrary to Article 3 of the Convention. Any restriction of these rights requires to be justified”.¹¹⁵

Moreover, Grand Chamber in other case in 2007 *Dickson v United Kingdom* told, that Government should perform their positive obligations before prisoners by helping them to enjoy their human rights.¹¹⁶

James Jacobs made an analysis in his article how prisoners could use their civil, political, social and economic rights at the time of imprisonment. Civil rights comprise in itself right to marry, divorce, property, take part in the court system. To scope of political rights belongs right to vote and right to be elected. The main issue of social and economic rights is to provide to people social benefits such as disability payments, mother payments, free education, different job training, placement services. In the other words state is responsible for providing to the people minimum standards of living conditions.¹¹⁷

In 2007 French Parliamentary Commission Nationale Consultative des Droits de l'Homme made the list of the rights that should be guaranteed to prisoners. The list is following:

- “The maintenance of the right to respect and dignity with regard to body searches, lengthy solitary confinement, multiple transfers, hygiene and mental health;
- The right to protection of the physical and psychological integrity of prisoners, which is particularly important because of the high percentage of suicides and aggression in prisons;
- The protection of the right to respect for the private and family life of prisoners concerning cell searches, control of correspondence, the right to sexuality, maintaining family ties (visit, transfers);
- The access to vocational training, the fight against illiteracy, the access to education and to fairly remunerated prison labour;

¹¹⁵ *Hirst v. the United Kindom* (No. 2), App no. 74025/01, 6th October 2005, European Court of Human Rights [ECtHR]

¹¹⁶ Smit, D. and Snacken, S., *supra*. n.114, pp 73-84.

¹¹⁷ Jacobs, J.B, *supra*.n.8, pp 80-105.

- The recognition and effectiveness of political and collective rights such as the right to vote, freedom of expression and freedom of association.¹¹⁸”

Obviously, all these rights should help to prisoners be reintegrated into society faster, than in the opposite situation, where most of the prisoners human rights are deprived. Moreover, it should positively effect on the level of reoffending and aggression in prisons.

Furthermore, Rule 4 of EPR states that: “prison conditions that infringe prisoners are not justified by lack of resources.”¹¹⁹ So, if we ask ourselves how the life in prison should be, answer should be taken from the Rule 5 of EPR, which states: “Life in prison shall approximate as closely as possible the positive aspects of life in the community.”¹²⁰ If look more precisely on the opinion of the scholar, Alexander Paterson, it seems reasonable, that if imprisonment is a sufficient punishment then other aspects of life should be as much as possible stay on the same level and life in prison should be as much as possible be similar with outside society.¹²¹

However necessary to bear in mind that two principles should always be considered in order to estimate does the limitation justified or not:

- 1) legitimacy of treatment of prisoners and
- 2) proportionality of the system of punishment and prisoners’ human rights.

5.1. The analysis of ways of derogations of civil, political, economic and social rights from the prisoners and possible consequences of it

5.1.1. Civil

Civil rights comprise in itself right to marry, divorce, property, take part in the court system, right to equality, this list is not exhaustive. Under the present chapter, special attention will be dedicated to the right to family life.

Right to family life protected by the Article 8 of the ECHR, which states that: everyone has the right to respect for his private and family life, his home and his correspondence.¹²² ICCPR states

¹¹⁸ French Foreign Affairs Ministry: The Commission nationale consultative des droits de l’homme, CNCDH, 1947.

¹¹⁹ Council of Europe: Committee of Ministers, Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, *supra*.n.5, rule 4.

¹²⁰ Council of Europe: Committee of Ministers, Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, *supra*.n.5, rule 5.

¹²¹ Coyle, A. *Understanding prisons: key issues in policy and practice*. Open University Press, 2005, p 13, p 129.

¹²² Council of Europe, *European Convention for the Protection of Human Rights and Fundamental Freedoms*, *supra*.n.4, Article 8

that family is essential group of society, which should be protected by State.¹²³ It means, that despite on the fact that prisoners are deprived of their liberty, their family rights could not be violated in unjustified way. Already in 1982 professorial lecture Andrew Coyle told that: “a convicted prisoner...retains all civil rights which are not taken away expressly or by necessary implication.”¹²⁴

Of course prisoners could not in the full sense enjoy right of family life, but it should be protected as much as possible by any possible means. The main reason for protection of prisoners’ right to family life will be discussed further.

In order to secure prisoners right to family, it is necessary to provide for them opportunity to meet their partners or children as often as possible and further such meetings should be without supervision. It is reasonable that before and after such meeting prisoner as well as guest should submit compulsory control in the purpose of security.¹²⁵

Furthermore, any derogation of prisoners’ rights should be proportionate and legal. In the case *Sunday Times v United Kingdom*¹²⁶ court argued that should be proportionate “pressing social need” and the means and methods used to achieve the social goal. Moreover, in the case *R. v. SSHD ex parte Daly*¹²⁷ in order to justify interference in family life, the need for interference should be obvious and must be rationally connected with probable violation and should not exceed the necessity.

In case *Mellor v Secretary of State for the Home Department*¹²⁸, the Court of Appel underlined that purpose of imprisonment is to punish offender by derogation of certain rights such as right to liberty, right to enjoy a family life. However, in this case judge underlined that special treatment should be for prisoner’s children, because for the well-being of the children is better to have a connection with both parents. Under special attention of this topic is young and vulnerable prisoners. It is reasonable that these prisoners are extremely needed a parental support. The tight link between children and imprisoned parent could be a factor, which could prevent a prisoner from committing the crime again.

¹²³ International Covenant on Civil and Political Rights, *supra*.n.18, article 23.

¹²⁴ Godd, H. “Regulating reproduction: prisoners’ families, artificial insemination and human rights.” *European Human Rights Law Review*, vol. 1, 2006, pp 39-48.

¹²⁵ Smit, D. and Snacken, S., *supra*.n.114, pp 219-245.

¹²⁶ Evants, M. “Prisoners and Right to Family Life” *Criminal Law and Justice weekly*, available at: <http://www.criminallawandjustice.co.uk/features/Prisoners-and-Right-Family-Life>, (accessed at 12 February 2016).

¹²⁷ *Ibid*.

¹²⁸ *Mellor v Secretary of State for the Home Department*, 3 WLR 533, 2001.

Furthermore, if look on this situation from the other side, it could be seen that prisoners' partners and children also could not use their civil rights at the time of partner imprisonment. Essential question here is in that extent is it justified to limit prisoners' right to family life. Into account should be taken a consequence that, prisoners' family members also are suffering from these derogations.¹²⁹ They are not quality in the actions, which made their parent or husband, but consequently basic rights of innocent people are violated. Unfortunately, parents' imprisonment means in this sense punishment for children as well.

Professor John Williams argued that it is in certain extent unfair to derogate a right of somebody only on the basis that another persons right is derogated. Firstly, it is not rational and do not provide equal opportunities for these families where is convicted person for the crime with the families, where no one served sentence in prison.¹³⁰ Is it unfair that prisoners' partners could lose his/her right to have family only because of the fact that her/his partner is the prisoner, because partner of the prisoner is not convicted and imprisoned.¹³¹

In the case *Beoku-Betts v. Home Secretary* Court stated that right, what is granted by the Article 8 of the ECHR should be granted to the family as a whole, because family has their one and only family life. It is impossible within one family derogate from one family member family right and from another not. Unfortunately, one derogation leads to violation of right to family life of the whole family.

European Committee against Torture and Inhuman or Degrading Treatment or Punishment, Recommendation Rec (2006)2, of the Committee of Ministers to member states on the European Prison Rules and Recommendation 1340 (1997)¹ stated that for prisoners who have family and especially children meeting should be organized in such way that allows to create and maintain family relationship as naturally as possible. Prisoners should have opportunity to spend time together with their family in private room.

European Court several times underlined that "... mutual enjoyment by parents and child of each other's company constitutes a fundamental element of family life, and domestic measures hindering such enjoyment amount to an interference with the right protected by article 8."¹³²

According to the reasoning of scholar Helen Godd, if State manages to save these connections, reintegration of the prisoners to the society will come faster and more successful. Moreover,

¹²⁹ Godd, H., *supra*.n.124, pp 39-48.

¹³⁰ Williams, J. "Have the Courts Got it Right? The Queen on the Application of Mellor v Secretary of State for the Home Department." *Child and Family Law Quarterly*, vol.14, 2002, p 218.

¹³¹ Godd, H., *supra*.n.124, pp 39-48.

¹³² *A.A.S. v Finland*, App no 56693/09, 26th October 2009, European Court of Human Rights [ECtHR].

saving the connection with family at the time of imprisonment could affect positively on reoffending, because it underlines the prisoner role in society as father or as a partner.¹³³

Effect of the derogation of prisoners' civil rights could be much more serious than might be seen from the first sign. If a person lose connection with his partner or children it probably effects on the prisoner reintegration, socialization and reoffending. Children and family as was mentioned in case *Mellor v Secretary of State for the Home Department* could be a factor, which could prevent a prisoner from committing the crime again. By the deprivation of prisoner civil right, we increase the chance of reoffending. So, even if prisoner will suffer in prison and will come to conclusion that he miss his family and do not want again commit a crime and be separated from his family, then he return to his family he could find that family connection already is broken and no one is awaiting for him.

It is understandable that is not possible to guarantee to prisoners full protection of right to family life in time of imprisonment. However, right to family life in the respect to Article 8 of the ECHR means that connections between family members should be saved through the visits and other ways of communications.

However, prisoners' contacts with the outside world should, especially with the family members, be considered as a matter of course, and not like a privileges. Such contacts should not be used either as a reward, or as a punishment. It should be unacceptable to deprive prisoners of such contacts and these violations will lead to violation of the law.

Question of the limitation of prisoners' right to family is serious and do not well regulated yet. Here is very essential to find a balance between four components. These components are: prisoner human rights, rights of prisoners' family members, purpose of punishment and Prison Rules.

5.1.1.1. Unjustified violations of prisoners' right to family in Estonia

Situation in Estonia is far from ideal. The last visit of CPT showed the weak points in providing for prisoners' opportunity to use their civil rights. At the time of CPT visit each prisoner has one telephone call up to 10 minutes per week. Each prisoner was entitled to one shorn-term visit per month, which should last no more than 3 hours. According to CPT report, prisoners should have at least four hours of short-term visit and in every week, not once in a month. Prisoners in

¹³³ Godd, H., *supra*.n.124, pp 39-48.

Estonia have the opportunity to use long-term family visits. They are available two times in year for up to free days. However, prisoner or his family should pay a fee for usage of a special room for long-term visits. It means that opportunity to spend with family time is fully dependent from the financial conditions of prisoner family. The CPT report stated that such discrimination by financial condition is unacceptable.

5.1.2. Political

The right to express political position includes both right to vote and right to be elected (be a candidate at elections).

The most discussable question in the field of political right of prisoners is prisoners' right to vote. It is understandable why is so. Right to vote is granted to people by democratic society, which should not be derogated. However, implication of this democratic right in the boundaries of prison do not regulated and do not organized in a proper way.

Through the analysis could be seen, that most of the countries considered deprivation of the right to vote as additional punishment, which is an indivisible part of deprivation of liberty. This issue will be discussed properly in the present chapter.

According to the made research author of the thesis came to the conclusion that proportionality test should be used in order to decide justified or unjustified limitation of prisoners' right to vote was imposed. Punishment should be proportionate in achieving the goal of punishing the conduct of prisoners and civil responsibilities and respect of the rule of law.¹³⁴

In European Union left not many countries, where in force domestic law, which provide an automatic prohibition on prisoners' right to vote. Basically, positions of the countries are different in this field, some of the countries decided not to limit prisoners' right to vote at all, but some like the United Kingdom and Estonia provide limitation in this area for prisoners.

Great debates caused the reasoning of the ECtHR in the case *Hirst v. United Kingdom (nr 2)* 2005. Great Chamber of the ECHR made a conclusion that total limiting prisoners' right to vote (blanket ban) is disproportional and against the ECHR (convention) additional protocol nr 1 article 3, which stated: "the High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of

¹³⁴ Foster, S. "Prisoners voting right: still no joy for the right to vote, but a light at the end of a very long tunnel." *Law Journal*, vol. 18 (2), 2013, pp 49-53.

the opinion of the people in the choice of legislature.”¹³⁵ The ECtHR in case *Hirst v. United Kingdom* empathized that in order to limit right to vote should be reasonable excuse. Moreover, excuse should be proportionate and legitimate.¹³⁶

Another case concerned the prisoners’ right express their opinion on referendum. In case *Moohan v Lord Advocate*¹³⁷ Moohan were concerned section 3 of the Representation of People Act 1983, which stated that: “a convicted person during the time that he is detained in a penal institution in pursuance of his sentence ... is legally incapable of voting any parliamentary or local government election.” On the basis of this legal act prisoner could not take part in the Independence Referendum. Prisoner insisted that such provision violates the Article 3 of Protocol 1 of the ECHR. Judges of the ECtHR could not find one and only right decision, the Supreme Court by the majority of 5:2 decided that there were no violation of the ECHR. So basically it depends in which sense look on the right of participation on the elections and how to interpret the Convention, majority of the judges decides that right that are granted by the Article 3 Protocol 1 of the ECHR. However, the minority found, that from the case law and interpretation of the convention is not directly follow that Article 3 Protocol 1 of the ECHR could not protect the prisoners’ rights to take part in referendum. Moreover, they found that referendum is extremely essential political right, because it expresses the will to end the power of legislature.¹³⁸

The aim of Article 3 Additional protocol 1 of the ECHR is provide for citizens opportunity to take part in governance of their community and minority of the court commission are tended to think that right to express opinion in referendum should be protected by Article 3 Additional protocol 1 of the ECHR.¹³⁹

Author of the thesis agree with the minority of the Court Commission and share the opinion that right to express opinion in referendum should be protected by Article 3 Additional protocol 1 of the ECHR.

Why some States decide to limit right to vote, what purpose they are following? According to the opinion of scholar Katre Tubro, limitation of the right to vote could be treated as additional

¹³⁵ Council of Europe, *Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 20 March 1952, ETC 9 article 3, available at: <http://www.refworld.org/docid/3ae6b38317.html>, accessed at 20 February 2016.

¹³⁶ Foster, S. “Reluctantly Restoring Rights: Responding to the Prisoners Right to Vote.” *Human Rights Law Review*, vol 9 (3), 2009, pp 489-507.

¹³⁷ *Moohan and another v Lord Advocate*. UKSC 67, 2014.

¹³⁸ Fradley, P. “Prisoners votes, referendums, and common law rights: A case note on *Moohan v Lord Advocate*.” *Oxford University undergraduate law journal*, 2015, p 54.

¹³⁹ *Ibid*.

punishment. Secondly, by that limit state tries to minimize the effect of prisoner on society outside the prison. Obviously, such restriction violates the basic principle, which provides that all members of society should be politically equal.¹⁴⁰

United Kingdom and Estonia supports the theory that limitation of prisoners' right to vote is additional punishment. Because, they in principle believe that, if person commit a crime he/she voluntarily rejects his civil liberties and rights, what is why it is proportionate to limit prisoners' right to vote.¹⁴¹

According to the made research author of the thesis has found that, in use are several justifications for putting limitation of prisoners' voting rights. Some countries, for example United Kingdom, are tended to think that limitation of prisoners' voting right should have preventive effect on society and as a result, it should increase the respect of rights of the citizens and welfare of society. Basically, it means that authorities of United Kingdom believe that a ban on the voting right of prisoners could prevent criminals to commit a crime.

The next explanation of the limitation of prisoners' right to vote is- moral. It means that the right to vote, the right to choose people who will represent our interest should be reserved only for citizens, who respect the law. They have more chances to make a choice in accordance with morality and they probably follow the aim of welfare of society. Consequently, reasonable to predict that according to this theory all prisoners are immoral and do not interested in the welfare of society.¹⁴²

The same conclusion reached scholar Jason McClurg, he found that right to vote is deprived from the prisoners according to the idea of "social contract". All people in society should have a common goal- a welfare of society. These who have another goal or break the rules of society and commit actions that contradict to understanding of welfare, should be excluded from the democratic society and prerogatives, which are provided by the democratic society.¹⁴³

According to the opinion of the thesis author, these explanations are more philosophical than legal. It is impossible to provide a precise answer on the question who will make a better choice prisoner or person outside the prison. Moreover, it is purely rhetoric question, could the awareness of the fact that right to vote could be limited in case of imprisonment stop the criminal

¹⁴⁰ Tubro, K. "Vangide valimisõigus." *RiTo* 23, 2011.

¹⁴¹ Ibid.

¹⁴² Ibid.

¹⁴³ McClurg, J. "Human Rights Court invalidated voting restrictions on prisoners." *International Enforcement Law Reporter*, vol. 20 (12), 2004, p 511.

from the crime commitment or not. In my opinion, these arguments could not be used in order to justify the limitation of prisoners' right to vote.

Last, but not least of the reasons for deprivation of prisoners' right to vote is that prisoners' are uninformed in this question. Claimed that prisoners should not have right to vote, because they do not have enough information for making a reasonable choice.

Next argument is that, providing to the prisoners' opportunity to use their right to vote is complicated for the countries. In order to provide for prisoners' opportunity to use their political right many questions should be answered. For example, how to register prisoners, according their personal address or by an address of the prison. How to organize technically voting in prison?¹⁴⁴

According to the opinion of the thesis author, such explanations of limitation of prisoner right to vote could not be accepted. Excuse that prisoners do not have enough information could be easily fixed. Prison authorities could provide for prisoners informative class about the future elections and special material in paper could be prepared for prisoners. Moreover, not the all prisoners spend in prison whole life, most of the prisoners are aware of current political situation in the country. Furthermore, now is century of technology question of organizing the voting process should not be a problem, especially in Europe. In European countries is sufficiently developed e-government. For example, in Estonia since 2005 have been possible to vote via ID card and web service.

So, problems, which are raised as a justifications of limitation of prisoners' right to vote could be easily fixed, if state decide to provide for prisoners opportunity to enjoy right to vote.

This question is not only discussed by people in rhetoric conversation, but also this issue is discussed by the ECtHR, because a lot of complaint were filled to the ECtHR. Essential case in the field of protection of prisoners' right to vote is the *Hirst v United Kingdom*. John Hirst, who was sentenced for murder turned to the ECHR on the basis of the ECHR additional protocol 1 article 3, which provide right to vote and to be elected. John Hirst insisted on the fact that there were none legitimate aims for deprivation of prisoners' right to vote and British parliament do not raise this question at all.

The ECtHR emphasizes that right to vote is under the competence of states, but at the same time right to vote is inalienable part of democratic society. Accordingly, if the state limits right to vote, it automatically diminishes democracy. Deprivation of liberty is already punishment and it

¹⁴⁴ Tubro, K., *supra*. n.140.

does not mean that person automatically lose protection of his basic rights under the European Convention on Human Rights. Court underlined that there is no logical connection between person civil rights and punishment for the committed crime. For example, if person commits crime but did not get imprisonment, his right to vote would not be limited.¹⁴⁵ Court underlined that restriction on the right to vote do not have independent time limits, it could last from one day until the whole life. Moreover, voting in countries usually happens one time in four years. It means that some of the prisoners will receive additional punishment and some not. Interesting issue is the voting right pretrial detainees. These people have not been convicted for the crime, but still the same restrictions as for prisoners are imposed on detainees.¹⁴⁶

Should be noted that the derogation of the prisoner right to vote effect of the society as a whole. For example, in Estonia citizens are not very active in the voting. By the deprivation of prisoners' right to vote decreased the number of active citizens, who want to participate in voting. Situation in the USA is also dramatic. According to the statics 2004, because of the restrictions on right to vote for prisoner, detainees, person on parole 3.9 million of American citizens were deprived of the right to vote.¹⁴⁷

5.1.2.1. Examples of approaches of different countries

There is no connection between the crime committed and restriction of the voting right of prisoner. If the person received as a punishment imprisonment, he/she automatically lose his political right. Such system exists in the USA, Estonia, UK and other countries. According to the opinion of Katre Turbo disproportionate measure is, if the restriction on the voting right imposed only on these prisoners who received real imprisonment and prisoners, who received shock incarceration or conditional sentence or electronic surveillance would not receive additional punishment as derogation of political rights.¹⁴⁸

In the USA voting right is also very essential democratic right, which is provided by the Constitution. Despite of this fact, almost every state in the USA provides deprivation of prisoners' right to vote. According to the reasoning of Michael Mushlin interest of the USA to

¹⁴⁵ Tubro, K., *supra*. n.140. and Hirst v. the United Kindom (No. 2), App no. 74025/01, 6th October 2005, European Court of Human Rights [ECtHR].

¹⁴⁶ Mushlin, B.M. *Right of prisoners (Individual Rights Series)*. Shepards/Mcgraw-Hill, 1993, p 45.

¹⁴⁷ *Ibid.*, p 50.

¹⁴⁸ Tubro, K., *supra*.n.140.

prisoners' right to vote started to exist only from the moment then the quantity of prisoners started to grow massively.¹⁴⁹

According to the reports of non-governmental organizations such as the Sentencing Project, Human Rights Watch, International Foundation for Election Systems more than four million Americans could not take part in voting. One of the reasons is deprivation of prisoners' right to vote. Secondly, in many states ex-prisoners also could not vote.¹⁵⁰

In 2012 United Kingdom government made a publication of Draft Bill-the Voting Eligibility (Prisoners) Draft Bill, which provided for the Committee of Both Houses three opportunities to reform in the field of prisoners' voting rights. Were decided to provide right to vote in all UK parliamentary, local and European elections for these prisoners who has sentence, which lasting no more than 12 months.¹⁵¹

According to the reasoning of scholar Steve Foster it is still not the solution for the problem, because right to vote is a guarantee of democratic society and right to vote it is not the privilege of good citizens, it should not be earned. However, it is not the absolute right and government could impose restrictions on this if the legitimate aim should be achieved.¹⁵² Committee believes that giving the right to vote for the prisoners, who had less than 12 month sentence could help to better reintegrate in society. Foster insisted that these questions are rhetorical and pragmatic.¹⁵³

In Estonia, prisoners' right to vote is limited by the Constitution. According to § 58 Constitutional Act of Estonia: "participation in elections may be circumscribed by law in the case of citizens of Estonia who have been convicted by a court and are serving a sentence in a penal institution."¹⁵⁴ It means that person in prison could not elect or be elected on European, national and regional level. Moreover, they could not take part in the referendum. These limits are applicable to all prisoners, it neither depend on crime, which prisoner has done nor the length of the sentence imposed. In Estonia limitation of right to the vote is treated the same as in Great Britain, as an additional punishment for misbehavior and destruction of welfare of society. Chancellor of Justice in Estonia emphasized that according to current law, financial situation of person plays also role there. Because if person do not have money to pay fine he\she must go to

¹⁴⁹ Mushlin, B.M., *supra*.n.146, pp 49-54.

¹⁵⁰ McClurg, J., *supra*. n.143, p 511.

¹⁵¹ Foster, S., *supra*.n.134, pp 49-53.

¹⁵² *Ibid.*, pp 49-53

¹⁵³ *Ibid.*, pp 49-53

¹⁵⁴ Constitution of the Republic of Estonia, passed by referendum held on 28 June 2012, RT 1992, 26, 349.

jail and only in this case persons right to vote will be limited.¹⁵⁵ Moreover, Chancellor of Justice turned attention to the document of Venice Commission "Code of Good Practice in Electoral Matters." According to that document, restrictions of the right to vote must have a basis in law, be in the public interest and comply with the principle of proportionality and the limits to use political rights could be imposed only by the Court.¹⁵⁶

The same opinion took the ECHR in case *Scoppola vs Italy*.¹⁵⁷ Contrary, in Estonian case nr 3-4-1-26-12 prisoner provided an application to the court in order to receive permission to vote in Parliamentary elections. Prison did not satisfy prisoner application and gave the reference to the RKVS § 4 lg 3. According to this article, in elections could not take part person, who serving sentence in prison. Prisoner decided to do not complain further. However, prisoner made an application to the Estonian Constitutional Court for recognition that RKVS § 4 lg 3 and § 22 lg 3 and Constitution of Estonian Republic contradict to the ECHR protocol nr 1 article 3. Chancellor of Justice and Constitutional Court made a conclusion that prisoner had an opportunity to provide a claim and appeal Prison decision.¹⁵⁸ Basically speaking, Court by the judgment say that yes, Estonian Constitution contradicts to the ECHR protocol nr 1 article 3, but until present days as § 58 of the Estonian Constitution as §4 lg 2 of RKVS are valid.

On the basis on made research could be made a conclusion that, right to vote is essential right, granted by democratic society. By the using of this right person feel the connection with the society, by the right to vote person could express his/her political opinion and preferences. Unjustified limitation could destroy connection between person and state and could destroy the believe of the prisoner in common welfare and in justice as such. Consequently, it could effect on reoffending. If while the imprisonment person lost all the connection, which normal people have outside the prison, after the return to society, he could find his place only among the same prisoners, which most probably lead to further crime commitment.

5.1.3. Economic and social

The main issue of social and economic rights is to provide to people social benefits such as disability payments, mother payments, free education, different job training, and placement

¹⁵⁵ Tubro, K., *supra*.n.140.

¹⁵⁶ European Commission for Democracy through Law (Venice Commission) "Code of Good Practice in Electoral Matters". Adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002). Available: [http://www.venice.coe.int/docs/2002/CDL-EL\(2002\)005-e.asp](http://www.venice.coe.int/docs/2002/CDL-EL(2002)005-e.asp), (accessed at 15 March 2016)

¹⁵⁷ *Scoppola vs Italy* (no3), App no126/05, 22 May 2012, European Court of Human Rights [ECtHR].

¹⁵⁸ RKHKo 3-4-1-26-12, 2012.

services and right to receive adequate living conditions. This is also very essential topic in the field of prisoners' rights.

Unfortunately, most of these rights are treated rather optional than fundamental. However, these rights have huge implication on the prisoners' future reintegration and reoffending.

Despite of the fact, that aim of the imprisonment will be discussed in the next chapter, author of the thesis underlines here that time, what is spent by offender in prison should have positive affect on him, at least he/she could obtain skills, which could help to him to reorganize life in non-criminal way. This will help to prisoners to reintegrate in society and by this level of reoffending will be reduced. That is why these rights should be guaranteed to prisoners.

5.1.3.1. Right to work and education

Prisoners should have opportunity to receive activities and trainings in prison, they should have access to own cultural and relaxing activities, this could safe or help to establish the connection with community outside the prison, where prisoner return to after imprisonment.

Prisoners should have opportunity to work and receive some money for their work, it could help them to earn by themselves in honest way in order to satisfy own needs. Moreover, after the imprisonment he could find job in the same field or continue to work in the same organization.

Basic Principles for the Treatment of Prisoners says in Article 6 that each prisoner is entitled to right to take part in cultural activities and education aimed at the full development of the human personality.¹⁵⁹

According to scholar John Garmon, right to education should be guaranteed for prisoners, because derogation of prisoner right to education is directly connected with the level of reoffending. In order to make sure that after imprisonment person could start a new life and became productive member of society prisoners' right to education could not be violated.¹⁶⁰

The legal protection of the prisoners' right to education is based on the Art 2 of Protocol No 1 of the ECHR. Right to education is also belonging to basic rights that should be granted for the human being without any discrimination.

¹⁵⁹ UN General Assembly, *Basic Principles for the Treatment of Prisoners: resolution/adopted by the General Assembly, supra.n.89*, article 6.

¹⁶⁰ Garmon, J. "Higher education for Prisoners Will Lower Rates for Taxpayers." *Black Issues in Higher education*, vol 18 (24), 2002, p 32.

In case *Velyo Velev v. Bulgaria*¹⁶¹ the ECtHR stated that “As regards the right to education, while Article 2 of Protocol No 1 of the ECHR could not be interpreted as imposing a duty on the Contracting State to set up or subsidise particular educational establishments, any state doing so would be under an obligation to afford effective access to them. Thus, access to educational institutions existing at a given time was an inherent part of the right set out in the first sentence of Art 2 of Protocol No 1. That provision applied to primary, secondary and higher levels of education”¹⁶²

By this statement the ECtHR once again underlined the necessary to make a proportionality test of the chosen measure and methods and the degree of limitation of the right to education. The ECtHR stated: “Any limitation on this right had to be foreseeable, to pursue a legitimate aim and to be proportionate to that aim. Although Art 2 of Protocol No 1 did not impose a positive obligation to provide education in prison in all circumstances, where such a possibility was available it should not be subject to arbitrary and unreasonable restrictions.”¹⁶³

This case is essential because in this ruling Court said that right to education should be granted as for remand prisoners as for convicted prisoners. From the other side that Court decision could demonstrate that right to education should be obligatory granted in case of “existing” educational opportunities. Basically speaking, the ECHR do not look on the topic of availability of the educational programs in prisons.¹⁶⁴

5.1.3.2. *Situation in Estonia*

In Estonia authorities are trying to provide to prisoners’ opportunity to take part in following activities but it is still not well regulated. In order such conclusion could be made author of the thesis analyzed legislation and report of CPT in regard to prisoners’ right to education.

According to the Vangistusseadus¹⁶⁵ para 34 prisoners, who are not proficient in Estonian are entitled to have opportunity to learn Estonian language in prison. Moreover, organize and finance these courses should prison. Furthermore, prisoners are entitled to receive primary and secondary education. However, it is not enough in order to full the present aim of the legal

¹⁶¹ *Velyo Velev v. Bulgaria*, Application nr 16032/07, European Court of Human Rights, 27 May 2014, [2014] E.L.R. 424.

¹⁶² Ibid.

¹⁶³ *Velyo Velev v. Bulgaria*, *supra*.n.161.

¹⁶⁴ Lavrysen, L. “Education in prison: right to education only protects access in case of “existing” educational facilities (*Velyo Velev v. Bulgaria*)”, *Strasbourg observers*, 2014.

¹⁶⁵ Vangistusseadus, RT I 2000, 58, 376, jõustunud 1.12.2000.

punishment for violation of the law. Technology is developed very fast, also prisoners are losing their social skills in the prison. What's why it is necessary to provide for prisoners additional training, which help them to rehabilitate better in society outside the prison, find a workplace and be a full-fledged member of society. For present moment in some prisons in the Estonia for prisoners are available courses of the Estonian language, art classes, social program, music class, sport.

In 2007 CPT was informed that according to the statistics on 12.09.2007 that for example in Murru prison level of prisoners who received general education in prison is sufficiently increased. CPT underlined that it is welcome development, but still addition work in this field are entitled to be done in order to treat the situation acceptable.¹⁶⁶

But basically what could be considered as acceptable level of education provided in the boundaries of prison in order to not the violate the rights granted by the ECHR?

In the opinion of the author of the thesis providing to the prisoners' right to education should not be treated as non-obligatory or additional. It should be treated, as it is, as a basic right. Moreover, special attention should be addressed to the aim of the imprisonment. As was discussed aim of the imprisonment had changed, that is why prisoners after imprisonment should be able to reintegrate into society, find workplace, pay taxes and respect the law. So, additional training should be included into list of educational program of prisoners, because it affects on the future reintegration of prisoners into society outside the prison and consequently on the welfare of society as a whole.

¹⁶⁶ Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 May to 6 June 2012, *supra*.n.9, p 31.

6. Consequences of unjustified limitations of prisoners' human rights

In the previous chapters the most widespread unjustified limitations of prisoners' human rights were discussed. Unfortunately, these derogations have consequences, which have an effect on prisoners and society outside the prison. In order to understand the consequence of unjustified limitations of prisoners' human rights, it is necessary to make an analyses and to answer the question of how the purpose of the imprisonment has changed.

6.1. The purpose of the imprisonment

The purpose of the imprisonment has changed dramatically trough the time and still it is trying to obtain a new shape. Over the years, capital punishment was abolished in many countries, new way of punishment were invented, such as conditional punishment, incarceration, electronic surveillance.

What is the imprisonment and what purposes and principles does it follows?

Imprisonment is one of the most commonly used methods of punishment for crime in all legal systems. Imprisonment is a sanction for serious violation of law, which has a length. A prisoner returns to society as soon as the imposed period of imprisonment has expired.

According to the basic idea of imprisonment, firstly, a person should be separated from the society and, secondly, imprisonment should prevent crime by incapacitation and by fear imposed on other member of society that they can also be punished in case of committing a crime.¹⁶⁷

At first, the method of imprisonment as a punishment for the crime was used to achieve two goals: to deprive the prisoner social life and isolate his/her from the society for security measures.¹⁶⁸

Retribution can also be considered as an ancient goals of imprisonment. Imprisonment is considered to be form of revenge, when criminals receive punishment for distributing the peace of society. To conclude it is generally assumed that when an crime offender goes to the jail, he or she will be a subject of ill-treatment and additional sufferings. This is their retribution, to feel the suffering that an offender caused to another people.

¹⁶⁷ Nagin, D., Cullen, F. and Johson, C. "Imprisonment and Reoffending." *From Crime and Justice: A Review of Research*, vol 38, 2009, p 115.

¹⁶⁸ Valson, M.C. *supra.n.3*, p 1-3.

According to the analysis of scholars opinion, punishment was developed in order to separate prisoner from the society and through the separation prisoner should understand that his behavior was wrong and he/she had to change their behavior. Moreover, government assumed that deprivation of liberty was not sufficient punishment and in order to make prisoners understand how to act in accordance with the welfare of society and not to break social rules, prisoner should be deprived of social, political, economic, cultural rights in addition to deprivation of liberty.

Through the analysis of the scholars opinions and statistics, the following conclusion could be reached: such treatment of the prisoners leads to additional problems in society such as prisoners' suicide, aggression, reoffending and poor reintegration into society outside the prison.¹⁶⁹

How did the aims of the punishment changed through the time and how new goals and new ways of achieving these goals affect the level of reoffending and welfare of society? Why is it changing?

Should the concept common in the times of Du Cane regime “hard labour, hard fare and had bed” and principle of treating prisoners – “to punish and reform people by the same operation” be applicable in XXI century?

Obviously, the answer is no. Already during the period of Enlightenment the role of prison had changed from the arbitrary infliction of pain to disciplinary unit.¹⁷⁰ Starting from that time prisoners' rights started to receive more protection.

At all times, the main purpose of the imprisonment was to protect society from crime and to provide safety to society as a whole.¹⁷¹ However today, additionally to this idea, another principle is in use – a person goes to prison as punishment, not for punishment. Scholars as well as judges of the ECHR came to the conclusion that deprivation of liberty is already punishment in itself and no other additional limitations of prisoners' human rights are justified.

With the acceptance of this principle of imprisonment, protection of the prisoners' rights started to grow. One of the first European countries which changed the attitude to imprisonment was Germany. Germany formulated the main goal of the imprisonment as re-socialization. Prisoners should use their time in prison with benefit and to learn how to behave in society, how to save connection with relatives, how to find a job after imprisonment.

¹⁶⁹ Roscam, H.A., *supra*.n.17, p 6.

¹⁷⁰ Smit, D. and Snacken, S., *supra*. n.114, pp 1-5.

¹⁷¹ O'toole, S. and Eyland, S., *supra*.n.12, p 70.

This principle and new approach to prisoners treatment to reduce the cases of reoffending and to protect safety in society. Moreover, this principle is in accordance with the ECHR.

A Johnson in his research noted that “the rehabilitation bureaucracy hopes to return its clients to the outside world prepared to play socially-approved roles.”¹⁷²

Obviously, it is better for community, if a prisoner returns to community after imprisonment as a person who obeys the law, who respects other people’s rights, who wants to be employed and who can find employment and pay taxes.

It means that if countries will start to follow the ECHR, decisions of the ECtHR for other countries, recommendations of CPT and guarantee to prisoners their human rights protection, the level of reoffending will be reduced.

As it was demonstrated, the purpose of the imprisonment has changed thought the time. Unfortunately, these changes are not promptly integrated in real life. Law acts, documents, and recommendations exist, but countries do not hurry to use them and to abolish unjustified limitations of prisoners’ human rights.

6.2. Recidivism and necessity of proper rehabilitation

Article 10 (3) of the International Covenant on Civil and Political Rights states that: “the penitentiary system shall compromise treatment of prisoners the essential aim of which shall be their reformation and social rehabilitation. Juvenile offenders shall be segregated from the adults and be accorded treatment appropriate to their age and legal status.”¹⁷³

Article 10 of the Basic Principles for the Treatment of Prisoners stated that: “with the participation and help of the community and social institutions, and with the due regard to the interests of victims, favourable conditions shall be created for the reintegration of the ex-prisoner into society under the best possible conditions.”¹⁷⁴ Basically it means that the reintegration program should be provided for all prisoners. Reintegration programs should consist of education, vocational trainings, training on social skills, proper consultation on the employment issue, physical and psychological assistance, help in fight with addictions.

¹⁷² Gideon, L. and Sung, H.E. *Rethinking Corrections: Rehabilitation, Reentry, and Reintegration*. Sage Publications, 2011, pp 22-24.

¹⁷³ Ibid.

¹⁷⁴ UN General Assembly, *Basic Principles for the Treatment of Prisoners: resolution/adopted by the General Assembly, supra.n.89*, article 10.

This is not general words, it is statics, which speaks louder than words. According to the research of Petersilia, before the arrest about 31% of prisoners are unemployed, 40% are functionally illiterate, 19% are illiterate and 13% have mental problems.¹⁷⁵ Tarlow in his research also wrote that most of the prisoners are poorly educated, have not attended a vocational trainings, are drug or alcohol addicted and often has problems with mental health.¹⁷⁶ To mental disorders which usually prisoners have could be attributed schizophrenia, depression, bipolar disorder, post-traumatic stress disorder.¹⁷⁷

That is why author of the thesis came to conclusion that unjustified limitations of prisoners' right to health, right to education, right to family life, right to vote is extremely essential topic, because if do not provide to prisoners' enjoyment of these rights it could affect on the society in a negative way. Sooner or later whose sick as physically as mentally destroyed people come back to society and start to act in the same way or even worse than before imprisonment. Conclusion that prisoners could behave even worse than before imprisonment was made on the following scholars ideas.

Daniel S. Nagin, Francis T. Cullen, and Cheryl Lero Johson in their research were found that "the structure of the law itself may cause previously convicted individuals to revise upward their estimates of the likelihood or severity of punishment for future lawbreaking."¹⁷⁸

According to the opinion of scholar Giles Playfair criminal offenders often consider the imprisonment as a "desert", he enjoying this time, and also should be noted, that in prison offender has a plenty of time in order to think about his future crime. Contrary prisoner should have opportunity to reestablish himself in society outside the prison, but in order he would like do so, the motivation and help should be provided for them.¹⁷⁹

Scholar M.Keith Chen insist on the fact that harsher prison conditions and derogation of prisoners' human rights may cause greater post-release recidivism. That is why necessary provide a proper protection of prisoner human rights in the legal level and moreover improve the control of the following the law.¹⁸⁰

¹⁷⁵ Petersilia, J. *When prisoners come home: parole and prisoner reentry*. Oxford University Press, 2003, p 35.

¹⁷⁶ Tarlow, M. and Nelson, M. "The Time is now: immediate work for people coming home from prison as a strategy to reduce their reincarceration and restore their place in the community." *Federal Sentencing Reporter*, vol. 20 (2), p 138-140.

¹⁷⁷ Miller, W.R. *The social History of Crime and Punishment in America. An Encyclopedia*. State University of New York at Stone Brook, 2012, p 342.

¹⁷⁸ Nagin, D., Cullen, F. and Johson, C., *supra*.n.167, p 124.

¹⁷⁹ Playfair, G. "Why Imprisonment Must Go", *Kentucky Las Journal*, vol 53, 1965, p 427.

¹⁸⁰ Chen, M. and Shapiro, M. "Do harsher Prison Conditions Reduce Recidivism? A Discontinuity-based Approach." *American Law and Economics Review*, vol 9 (1), 2007, p 22.

6.2.1. Recidivism

The problem of recidivism requires complex investigation. Recidivism is, first of all, a criminal legal notion, and it is the task of criminal legislation to maintain the legal norms, regulating responsibility for reoffending.

Recidivism should include three legal attributes defining its qualitative diversity: i) commitment of two or more crimes ii) previous conviction record iii) fully or partially served sentence imposed by the Court for committing a previous crime.

Why are imprisonment and limitations of prisoners' human rights not helpful anymore in the fight with crime? Is it a new phenomenon or did it start long time ago?

The following statement demonstrates that already in 1930 years these unjustified limitations of prisoners' rights brought consequences that were discussed in the present thesis. The following statement demonstrates that prisoner lost all connections that he had before imprisonment and in prison he was not provided with the training of social skills, additional training or education. As a result, prisoner saw his life only in the light of crime.

Thoughts of prisoner in 1930:

“I tried to think of my future but more crimes and jail bars stared me in the face at every angle. There was no hope but in crime. All my friends were criminals and besides I was a criminal and nobody would trust me-only look down on me and shun me. Somehow I was different from anybody but criminals and I always felt drawn to crime. Circumstance had turned me back into jail every time before when I tried to make good. But now I had lost my ambition and didn't care for anything but crime. Was I not completely alone in the world except for my buddies in crime and did I not always feel pulled to them and to the adventures and luxuries that crime offered? I was educated in crime.”¹⁸¹

In the opinion of the author of this thesis, this statement should have been taken into account long time ago. Unfortunately, because of the unjustified limitations of prisoners' human rights, prisoners lose any hope for normal life and see their future connected only with the crime. Obviously it leads to reoffending.

According to the opinion of Gideon and Sung, present prison conditions are not a suitable place for rehabilitation.¹⁸² Relying on the studies of Wynn's the present prison conditions do not help

¹⁸¹ Shaw, B. *The crime of Imprisonment*. Greenwood Pub Group, 1969, pp. 162-163

¹⁸² Gideon, L. and Sung, H.E., *supra*. n.172, pp 7-10.

to rehabilitate, they even provide additional problems.¹⁸³ Leon Radzinowiz and Martin E. Wolfgang wrote in their work that imprisonment destroys cohesion with the family and employment, what as a consequence leads to recidivism.

Consequently, this means that punishment as imprisonment, which automatically leads to unjustified limitation of prisoners' human rights should have been revised and improved long time ago.

Countries of the European Union as well as countries outside the EU are trying to fight recidivism, but the methods which are in use already outdated. The most common method in fight with recidivism is provision the stricter punishment for reoffenders. For example, in the USA, in Washington it was decided to change imprisonment duration in case of reoffending. A minimum sentence became ten years for second felony, third misdemeanor or third petit larceny.¹⁸⁴

High reoffending rates show that imprisonment does not fulfill the goal of preventing future crimes. M.C. Valson is sharing the opinion that crimes is not the choice of criminals, it means that political, economical and social situation of the society gives rise to crime.

Obviously, the phenomenon of recidivism should be abolished as soon as possible. The scholar Giles Playfair came to conclusion that progress in the reduction of the level of recidivism could be achieved through the serious reforms in the field of treatment of prisoners and protection of their rights.¹⁸⁵

The treatment of prisoners and prison conditions are controlled by the law makers. Moreover, the treatment of prisoners and living conditions in prison are directly connected with criminal justice system and the level of post-released crimes. Changes in the treatment of prisoners and respect of their human rights can lead to effective crime-control.¹⁸⁶

Protection of prisoners rights will lead to a more successful reintegration of the ex-prisoners into society outside the prison. As a consequence, successful reintegration should give a positive impact on the economy of the states.

The examples of countries, which will be briefly discussed further, demonstrate, that if prisoners are treated with the compliance of human rights principles, the environment in prison will

¹⁸³ Wynn, J. *Inside Rikers: Stories from the worlds largest colony*. New York: St. Martins Griffin, 2001, pp 54-58.

¹⁸⁴ Legal dictionary, available at: <http://legal-dictionary.thefreedictionary.com/recidivism>, accessed at 30 March 2016.

¹⁸⁵ Playfair, G., *supra*.n.179, p 431.

¹⁸⁶ Chen, M. and Shapiro, M. *supra*.n.180, pp 1-5.

improve. More prisoners can be transferred to prisons with lower security conditions, where they can work, which also save governmental resources on the maintenance of the prisons.¹⁸⁷

To conclude, the problem of recidivism is highly debatable topic and it has been discussed for a long time. Despite the fact the states are trying to find the ways of fighting with the reoffending, chosen measures are not giving the proper results. The analyses of the scholars opinion shows that only possible and available method for fighting recidivism is to give prisoners an opportunity to enjoy their human rights and to help them to become a full member of society.

6.3. Examples of reintegration process in countries

In order to demonstrate possible ways of prisoners' reintegration into society outside the prison, the author of the thesis decided to build comparative analysis on the two absolutely different approaches of the countries. Germany is trying to provide as much as possible protection for prisoners human rights and in the USA contrary prisoners are subject to derogations of human rights. These two approaches differently affect recidivism level, proof of it will be discussed in present sub-chapter.

6.3.1. Germany – example of successful reintegration

One of the factors, which affected on changes in treatment of prisoners is understanding of idea of rehabilitation and avoidance of return of prisoners to the community. In Germany already since the 1967 in force criminal law which changed the concept of prisoner's resocialization. Germany decided to relax the prison regime and made living conditions which are as much as possible are similar to live in community.¹⁸⁸ Section 2 of the German Prison Act (Strafvollzugsgesetz - StVollzG) states that the reintegration of the prisoner into society was the sole objective if the execution of sentence. In Germany exist different treatment plan for prisoners. Different treatment plan is based on prisoner's division by the committed crimes. Prisoners, who committed serious crimes and are dangerous for society are often concentrated in one prison, separately from less dangerous offenders.

Moreover, after the success of the pilot version of the open prison, Germany implemented this in real system, which is in use until present days. Open prison is developed for these prisoners, who had up to 18 month sentence of imprisonment. Mostly it is concerned employed prisoners,

¹⁸⁷ O'toole, S. and Eyland, S., *supra*.n.12, p 77.

¹⁸⁸ Dünkel, F. and Smit, D.Z. *Imprisonment Today and Tomorrow. International perspectives on prisoners' tights and prison conditions*. Springer, 2001, p 303.

because according to rules of open prison, prisoners could continue to work. Furthermore, these groups of prisoners are not entitled to first spend some time in a closed prison. This is made first of all, in order to simplify reintegration of the prisoners. Because often prisoners are losing their work and after it is difficult to find a workplace for person with a criminal history. In this case prisoners will save workplace.¹⁸⁹ Since 2003 in German prisons are established special therapeutically groups. In these groups, prisoners learn how to behave in society in the form of social training, by the teamwork. They moderate different spheres of life and responsibilities in these groups. Fields includes work, home, financial responsibilities, personal relationship. Germany from the 1970 is a good example in the field of respect of prisoners' human rights and prisoners' reintegration in society. According to the reports, in comparison to prisoners who served a sentence in closed prison with prisoners from open prison with the social therapy course the level of recidivists is 10 to 20 per cent lower.¹⁹⁰

Germany formulated the main goal of the imprisonment as resocialization. After the end of imprisonment period prisoner should feel his responsibility and place in society, respect to the law system. However, other countries, as well as Estonia, pointed out that the main goal of imprisonment is punishment and separation from the society.

German Prison Act Section 3 states:

“(a) Life in prison is to be made as similar as possible to general living condition;
(b) the harmful effects of confinement are to be counteracted; and
(c) the execution of the sentence is to be orientated towards the eventual reintegration of the prisoners of the free society.”¹⁹¹

The prisoner should be encouraged to exercise the treatment program on himself.¹⁹²

As research shows Germany is interested in protection of prisoners Human Rights. German authorities are trying to provide for prisoners protection of their human rights, by imposing positive obligation to the state, providence of adequate prison administration, set legally justified and only essential limitations on prisoners constitutional rights, providing prisoners with resources to a Prison Court.¹⁹³

¹⁸⁹ Ibid., p 308.

¹⁹⁰ Dünkel, F. and Smit, D.Z., *supra*. n.188, p 309.

¹⁹¹ Lazarus.L. *The German Prison Act: Principles and Special Provisions: in contrasting prisoners rights: A comparative Examination of England and Germany*. Oxford University Press, 2004, pp 23-123.

¹⁹² Dünkel, F. and Smit, D.Z., *supra*. n.188, p 311.

¹⁹³ Lazarus.L., *supra*. n.191, pp 23-56.

As research showed approaches to prisoners' treatment and further reintegration differs from England, Estonia and the USA. In England, despite on the huge amount of legal documents, which are providing protection of prisoners human rights, real legal and practical protection of prisoners human rights is in poor level.¹⁹⁴ In England contrary has not positive attitude to prisoners human rights. For England is difficult to change the treatment of prisoners and providence for their enjoyment of human rights.¹⁹⁵ Legislative regime is different in England and Germany. Moreover, political, penal, constitutional base of each country differs.

Absolutely different attitude of German Court reasoning in the field of treatment of the prisoner in comparison to Estonian Courts. Already in 1999 the High Court (Oberlandesgericht) of Lower Saxony provided a conclusion that prisoners have a right to privacy. It means, that at least in night time prisoner should spend alone in a single cell. Problems with overcrowding also essential in Germany. However, standards of accommodation of prisoners German has much higher. Already in 1980s Ministry of Justice provides, that cell should be not less than 22 m² and have a window of at least 1 m². For each prisoner, who spends in prison night should be provided at least 10 m² in a cell.¹⁹⁶ Contrary, in Estonia six persons accommodated in 15 m². It means that for every prisoner is approximately 2,5 m². However, CPT standard is 4 m². Moreover, most of the cells have bad ventilation and are in poor hygiene conditions, in cell pipes are leaking, exist mold in the sanitary facilities. Prisoners are allowed to take a shower only 1 time in a week, but according to European Prisoner Rules it should be provided minimum two times a week.¹⁹⁷

To conclude, Germany has very modern approach in the field of treatment of prisoners, which could be named as systematic and comprehensive. Germany has faith in human rights and will to provide protection of prisoners' human rights. Moreover, statistics is speaking louder than words. Treatment of the prisoners developed by German authorities helped to reduce the recidivism level on 10-20%. These numbers prove that other countries should take an example of Germany and refuse of usage of principle "to punish and reform people by the same operation", which contrary increase the level of reoffending. Moreover, countries should take as granted that offender go to the jail as a punishment, not for punishment.

¹⁹⁴ Ibid., pp 23-123.

¹⁹⁵ Lazarus.L., *supra*. n.191, pp 23-123.

¹⁹⁶ Dünkel, F. and Smit, D.Z., *supra*. n.188, p 313.

¹⁹⁷ Council of Europe: Committee of Ministers, Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, *supra*.n. 5, Rule 19.4: Adequate facilities shall be provided so that every prisoner may have a bath or shower, at a temperature suitable to the climate, if possible daily but at least twice a week (or more frequently if necessary) in the interest of general hygiene.

6.3.2. The USA – example of unjustified limitations of prisoners rights, non-developed reintegration process and consequences of it

The USA is interesting example in the boundaries of present thesis, because this country from another legal system and interesting to see how the prisoners' human rights are protected in Common Law country and that protection prisoners could receive by the Bill of Rights.

According to the World Prison brief, the USA has the highest rate of prisoners per capita in the entire world, 707 prisoners per 100 000 people. Even in such massive countries with a huge population as Mexico, Russia, China prisoners amount to 100 000 people is lower at least in two times. Moreover, around 2,2 million of people are serving their sentence in local, state and federal prisons. Basically speaking, it is around 25 % of the worlds prisoners.¹⁹⁸

Is such high prison rate was always in the USA or not? According to the conclusion of Bill Quigley and Sara Godchaux and analysis of statistics could be made a conclusion that quantity of prisoners increased since 1980 almost to 300 %. However, this number is not affected by level of the crime (because it was more or less on the same level) and by quantity of population (39% increase, that is not sufficient). What could be the reason of it. According to the made analysis, conclusion could be proposed, that in the USA poorly developed the reintegration program and prisoners are suffering from the unjustified limitations of their human rights, which as a consequence leads to huge amount of the cases of reoffending.

According to the opinion of the scholars Bill Quigley and Sara Godchaux protection of prisoners human rights are poorly regulated in the United States of America.¹⁹⁹ They found that attitude of the USA to prisoners human rights is negligent. Prisoners in USA prisons often are suffering from the human rights abuses, mostly in the questions of health, safety and treatment. Problems of cells overcrowding, inhumane and degrading treatment conditions, problems with access to medical assistance, lack of physiological assistance.²⁰⁰ Scholars came to the conclusion that in the USA prisoners human rights are not on the first place of the development agenda, changing the system of treatment of prisoners is extremely expensive and time consuming.²⁰¹

Their conclusion is interesting and essential, because U.S. Constitution provides protection for prisoner's human rights. According to the research of Bill Quigley and Sara Godchaux for

¹⁹⁸ Institute for criminal policy research, World Prison Brief- United States of America, available at: <http://www.prisonstudies.org/country/united-states-america>

¹⁹⁹ Quigley, B and Godchaux, S., *supra*. n.11, p 361.

²⁰⁰ *Ibid.*, p 363.

²⁰¹ *Ibid.*, p 363.

prisoners is extremely difficult to fight for their rights, because this process is costly for prisoners and timely.

To conclude, all these factors shows, that level of recidivism in the USA is growing, prisons could not accommodate such amount of prisoners, as a consequences prisoners are suffering from the overcrowding, poor treatment conditions, inappropriate medical assistance and reintegration program is remaining out of focus. According to the analysis, could be concluded, that it is time for changes, because level of recidivism in the USA is extremely high and in huge part of the population of the USA is spending time in prison. Consequently, more resources should be invested in reintegration programs and protection of prisoners' human rights should be developed in law and judicial level. Prisoners should have opportunity to fight for their rights and judicial proceeding should be acceptable for prisoners.

To conclude, the studies on the topic of reoffending shows that people, who released from prison is more under the risk of the recidivism in comparison with people, who was punished with other sanctions.²⁰² What does it mean? Basically it means, that if the offender is in prisoner society, where his human, political, economical and social, civil rights are violated, he/she after imprisonment could not find his place in society outside the prison, connections with the family, employer are broken, social skill were lost, professional skills are also lost. Moreover, if in prison were lack of medical and psychological assistance, person could have problems with the health. In this situation person is under the risk to commit a new crime. All these factors affect level of reoffending.

²⁰² Ahven, A. "Recidivism of people released from prison and factors influencing it." *Retsidiivsus Eestis*, 2010, p 201.

Conclusion

The present thesis was dedicated to the investigation of the topic of unjustified limitations of prisoners' human rights, which are protected by the European Convention on Human Rights. Other documents, such as European Prison Rules, ICCPR, ICESCR, UN Basic Principles for the Treatment of Prisoners and CEDAW, which provide protection for prisoners' human rights, were also taken into consideration.

Analyses of these documents and case law of the ECtHR showed that protection of prisoners' human rights is guaranteed on the paper and in the documents, but in the real life, the situation is different and far from ideal. Even in 21th century prisoners' human rights can be cruelty violated and prisoners can suffer from degrading treatment or punishment.

It is indisputable that people in society should be responsible for their actions and dangerous criminals should receive punishment of imprisonment. However, it does not mean that limitations of human rights, especially the right to healthcare, protection from torture and inhuman or degrading treatment or punishment, the right to family life, the right to vote, the right to education can be justified by imposed sentence of imprisonment. Prisoners have special status in society and they are subject to special regime, but according to the theory of natural law, prisoners are still human beings, despite the fact that they have committed a crime and they should also enjoy the rights granted to them by virtue of natural law.

State took on itself right to derogate liberty from people, that is why state should take responsibility to guarantee to prisoners' adequate living conditions, appropriate health assistance and protection from torture and degrading treatment or punishment. Prisoners' dignity should be respected.

The research in present thesis confirms that ways of the punishment that have been in use for several ages already are not giving adequate results and do not provide decisions for the actual problems in contemporary society. Moreover, these methods violate the human dignity. The examples of the countries approaches to punishment and imprisonment demonstrated that unjustified limitation of prisoners human rights provides conditions for the increase of reoffending rates , while an example of the Germany showed that respect of prisoners human rights could reduce the level of recidivism on 10-20%. The reason of such success lies in the understanding of the aim of the imprisonment.

Law, enforcement bodies, the dynamic development of the world and the increase of minimum living standards have affected on the growth of protection of human rights and have changed significantly the aim of the imprisonment. The main difference between the meaning of the imprisonment what was 60 years ago and the definition of the imprisonment in modern days is that today in use principle, that offender goes to the prison as punishment, not for punishment. The core idea of this principle states in that deprivation of liberty is already punishment in itself and no other additional deprivations should be imposed on prisoners automatically.

The author of the thesis have found that this principle is supported as by both: the scholars and the judges of the ECtHR. According to this principle, violation of prisoners' rights should past a proportionality test in order to be justified and case law of the ECtHR shows that prisoners human rights are often violated without any legitimate aim and fail to pass the proportionality test.

The novelty of the present theses is mostly concentrated on the confirmation of the hypothesis that in XXI century the sentence of imprisonment leads to unjustified limitations of prisoners' human rights. The idea was to collect the most serious and at the same time most effective on the in terms of recidivism unjustified limitations of prisoners' human rights and show what consequences of each unjustified limitation brings and where such limitations can lead.

In order to achieve this, unjustified limitations of the rights granted by the Article 3 of the ECHR, Article 8 of the ECHR, article 3 of Protocol 1 of the ECHR, Article 2 of Protocol 1 of the ECHR in regard to prisoners' thesis were analyzed in present. These unjustified limitations were chosen, because they formed the basis for proving the hypothesis of the present thesis, which states that deprivation of liberty contributes to automatic loss of prisoners' human rights. A real legal problem was stated requires a prompt and up-to-date decision. That is why derogations of these rights were analyzed on a one by one, were the reasons, the aim and consequences of these derogations were discussed. Each derogation also was briefly discussed at the Estonian level.

Unjustified limitations of the human rights granted by the Article 3 of the ECHR mostly concerned the question of treatment of the offenders in prison, their health protection and the living conditions in prison. The state should follow their obligation to provide prisoner's with adequate accommodation and bedding conditions, hygienic conditions, cloths, food and out of cells activities. In the context of this chapter was discussed the problem of transmission of the deceases in prison and from prisoners to society outside the prison, protection of prisoners from the torture and inhuman or degrading treatment or punishment, especially for risk groups (HIV + and prisoners with mental disabilities).

Unjustified limitation of the human rights granted by Article 8 of the ECHR mostly concerned the right to family life. Right, what goes from the Article 8 of the ECHR is granted to the family as a whole, family has their one and only family life. It is impossible within one family derogate the family rights and from another not.

Proper organization of this issue is difficult. The reason for this is that it is hard to find a balance between four components. These components are: prisoner human rights, rights of prisoners' family members, purpose of punishment and Prison Rules.

Limitation of prisoners' right to family life has serious consequences; mostly they are expressed in the problem of reoffending and reintegration of the ex-prisoners into the society outside the prison. As the analysis of the academic articles and court cases demonstrates, judges and scholars tended to think that children and family could be a factor, which can prevent a prisoner from committing a crime again.

The issue of unjustified limitation of the human rights granted by Article 3 of Protocol 1 of the ECHR mostly concentrated on the political right of prisoners, especially on the prisoners right to vote. Unfortunately, the analysis of the court cases and academic articles showed that, deprivation of prisoners' right to vote is often considered as additional punishment, which is an indivisible part of deprivation of liberty. The author of the thesis tried to understand through analysis whether such limitation is justified or not. Regarding this question the following conclusion was made: there is no causal link between the crime committed and the restriction of the voting right of prisoner. The restriction of the right to vote is usually imposed automatically, the type of committed crime and length of imprisonment are not taken into account. Therefore, such limitation could not pass the proportionality test and be justified.

Unjustified limitation of the human rights granted by Article 2 of Protocol 1 of the ECHR mostly concerned the prisoners right to work, education, training and cultural development. These rights are essential in terms of reoffending rates. Using these rights, prisoner can obtain the new skills, which will help them to organize their lives outside the prison in a non-criminal way. It is proven that most of the prisoners are illiterate. So, if in prison they receive opportunity to study, to improve their knowledge as practical as theoretical, it will help them find employment, which in its turn, as research shows, decrease the level of reoffending. Moreover, prisoners should have an opportunity to work and receive some money for their work, it can help them to learn how to earn by themselves in honest way and satisfy their own needs.

The analysis of all these aspects helped to give an answer to the research question whether the unjustified limitation could affect the recidivism and reintegration of ex-prisoners in society outside the prison.

Special attention was paid to the topic of the prisoner's reintegration in society outside the prison. This research question was brought up, because quality of reintegration is directly connected with the level of reoffending.

Law enforcement in fighting crime, to a large extent, depends on the effective prevention of crimes and assaultive offence with increased social danger level, including recidivism. In this regard, the questions of improving both the legislative framework and law enforcement actions, regarding recidivism, are very important.

As the conducted research shows, derogating prisoner's rights is directly connected with the level of post-released crimes. Changes in prisoners treatment and respect of their human rights can lead to effective crime-control, because the system which violates prisoners' human right and encourages the ill treatment of prisoners creates conditions for future law-breakings. In such conditions people become more aggressive, lonely and have no purpose for living after imprisonment.

As the research shows, scholars tended to think that progress in reduction of the level of the recidivism could be achieved through the serious reforms in the field of treatment of prisoners and protection of their rights.

To conclude, this research was conducted in order to show that purpose of imprisonment is changed long time ago and as a consequences the treatment of the prisoners should be changed. Protection of prisoners human rights is provided by international conventions, recommendations and documents. Prisoners are not slaves any more and their human rights could not be violated without proportionate and legitimate aim.

The hypothesis for the research was confirmed and the author of the thesis concluded that deprivation of liberty contributes to automatic loss of prisoners' human rights. Scholars and judges of the ECHR are fighting with prisoners for justice in this question and sooner or later result should be achieved. Prisoners started their fight for their human rights long time ago and step by step this fight brings results.

Summary

The aim of the thesis is to analyse unjustified limitations of prisoners' human rights and to show what consequences these limitations can have. The hypothesis of the present thesis is stated as the following: deprivation of liberty contributes to automatic loss of prisoners' human rights. In the framework of the present thesis, under the term "prisoners' human rights" the following rights are considered: the human rights protected by Article 3 of the ECHR, Article 8 of the ECHR, article 3 of Protocol 1 of the ECHR, Article 2 of Protocol 1 of the ECHR. These rights are chosen according to the criteria, that derogation of these rights affect reintegration and as a consequence recidivism. Such conclusion is reached using the research and analysis of scholars' research and the court cases of the ECHR in this field. In the present thesis were used examples of some European and non-European countries are used in the field of unjustified limitations of prisoners' human rights and recidivism. Moreover, a parallel between the situation in Estonia and other countries is drawn concerning each case of unjustified derogation of prisoners' human rights.

The thesis consists of seven chapters and mostly all of them have sub-chapters. Each chapter is dealing with the analysis of the unjustified limitations of prisoners' human rights, but each chapter has its unique context.

Chapter 1 is introductory and provides an overview of the discussed topic, explains why this topic was chosen and why it is relevant for a discussion.

Chapter 2 examines protection of prisoners' human rights in general, how it is regulated, and what documents provide protection of prisoners' rights. Chapter 2 has a sub-chapter, which has separate parts as well. In the part one of the sub-chapter 2.1, the author of the thesis examines the concept of natural law and how it is related to protection of prisoners' human rights. The next part of this sub-chapter is dedicated to the history of the development of prisoners' human rights and the development of enforcement of prisoners' human rights protection under the ECHR and under other legal documents, what provide protection of prisoners' human rights.

In chapter 3 the author analysed the justified and unavoidable limitation of prisoners' human rights. Chapter 3 is subdivided into two parts. Part 3.1 describes limitations on freedom of movement and includes a brief analysis of the reasons why it is justified to limit prisoners' right to free movement. Part 3.2 is dedicated to a brief analysis of the prisoners' right to privacy, and

to what extent the right to privacy can be limited in prison and what is the legitimate aim of this limitation.

Chapter 4 is dedicated to the research on the topic of unjustified limitation of prisoners' human rights, protected by the Article 3 of the ECHR. Chapter 4 is divided into two subchapters and these sub-chapters are divided into parts. The sub-chapter 4.1 provides a comparative analysis of the treatment of prisoners 60 years ago and nowadays. The questions on how Article 3 of the ECHR is interpreted with respect to prisoners are discussed in this sub-chapter. The sub-chapter 4.2 is concerned with the prisoners' right to healthcare. The analysis of who and why is responsible for prisoners' health during the imprisonment was brought up. This sub-chapter is divided into three parts. The part 4.2.1 deals with HIV+ prisoners, their treatment in prison and includes a discussion on the topic of justified or unjustified limitation of right to confidentiality in prison. The part 4.2.2 challenges the question of medical assistance for mentally disabled prisoners and the part 4.2.3 provides an overview of future steps directed to protection of prisoners' right to health under Article 3 of the ECHR. The analysis of the effects that derogation of rights granted by Article 3 of the ECHR could have on recidivism, reintegration and welfare of society concludes the chapter.

Chapter 5 is concerned with unjustified limitations of civil, political, social and economic rights for prisoners and the possible consequence of such limitations. This chapter has one sub-chapter, which is divided into three parts. In the part 5.1.1 civil rights of prisoners are discussed, mostly the analysis is concerned with the unjustified limitations of prisoners' right to family, the situation in Estonia in this field is also discussed. The part 5.1.2 concentrates on the analysis of derogation of prisoners' political rights of prisoners, especially the right to vote. The examples of different countries, such as the USA, UK, and Estonia and their approaches to the right to vote for prisoners are briefly demonstrated in a subpart. In the part 5.1.3, the author of the thesis analysed economic and social rights of prisoners, mostly the research was concerned with prisoners' right to education and prisoners' right to work. The example of Estonia is added.

In chapter 6, the author of the thesis analysed the consequences of unjustified limitation of prisoners' human rights. This chapter is divided into three sub-chapters. The sub-chapter 6.1 is dedicated to the investigation of the purpose of imprisonment. The author of the thesis tried to answer on the question of how the purpose of the imprisonment had changed through the time and how it should affect on the protection of prisoners' human rights. The sub-chapter 6.2 concentrates on the issue of recidivism and the necessity of proper reintegration of ex-prisoners outside the prison. Part 6.2.1 of this sub-chapter is fully dedicated to the analysis of the

phenomenon of recidivism, and the author proposed ways of eliminating this legal problem. In the sub-chapter 6.3 the author of the thesis demonstrated examples of the reintegration programs in Germany and the USA some statistical data also is also provided.

Next chapter is dedicated to the conclusions. The main aim of the thesis is to prove my initial hypothesis that deprivation of liberty contributes to automatic loss of prisoners' human rights has been reached. Also it was essential for present thesis to demonstrate and analyse the consequences of unjustified limitations of prisoners' human rights. On the basis of conducted research, the author of the thesis can come to a conclusion that cases of recidivism can be reduced in case of the elimination of unjustified limitations of prisoners' human rights.

Reference list:

1. Books and Independent Publications:

Abels, D. *Prisoners of the international community: The legal position of persons detained at international criminal tribunals*. T.M.C. Asser Press, 2012.

Arai-Takahashi, Y. *The Margin of Appreciation Doctrine and the Principle of Proportionality in the Jurisprudence of the ECHR*. Antwerp: Intersentia, 2002.

Coyle, A. *Managing prisons in a time of change*. United Kingdom: International Centre for Prison Studies, 2002.

Coyle, A. *Understanding prisons: key issues in policy and practice*. Open University Press, 2005.

Dünkel, F. and Smit, D.Z. *Imprisonment Today and Tomorrow. International perspectives on prisoners' rights and prison conditions*. Springer, 2001.

Foster, S. *Human Rights and civil liberties*. Harlow, England; New York: Pearson/Longman, 2008.

Gideon, L. and Sung, H.E. *Rethinking Corrections: Rehabilitation, Reentry, and Reintegration*. Sage Publications, 2011.

Gromwell, Paul F. *Jail and Justice*. Charles C. Thomas Publishers, 1976.

Jacobs, J.B. *New perspective on prison and imprisonment*. New York: Cornell University Press, 1983.

Kosta, V. *Fundamental Rights in EU Internal Market Legislation*. Florence: European University Institute, 2013.

Lazarus, L. *The German Prison Act: Principles and Special Provisions: in contrasting prisoners' rights: A comparative Examination of England and Germany*. Oxford University Press, 2004.

Miller, W.R. *The social History of Crime and Punishment in America. An Encyclopedia*. State University of New York at Stone Brook, 2012.

Moller, L. and Stover, H. and Jurgens, R. and Gatherer, A. and Nikogosian, H. *Health in prisons: a WHO guide to the essentials in prison health*. World Health Organization, Copenhagen, 2007.

- Murdoch, J. *The treatment of prisoners European Standards*. Strasbourg, France: Council of Europe, 2006.
- Mushlin, B.M. *Right of prisoners (Individual Rights Series)*. Shepards/Mcgraw-Hill, 1993.
- O'toole, S. and Eyland, S. *Corrections Criminology*. Hawkins Press, 2005.
- Petersilia, J. *When prisoners come home: parole and prisoner reentry*. Oxford University Press, 2003.
- Sarkin, J., Haeck, Y. and Lanotte, J. *Resolving the Tension between Crime and Human Rights: An Evaluation of European and South African Issues*. Maklu Publishers, 2001.
- Shaw, B. *The crime of Imprisonment*. Greenwood Pub Group, 1969.
- Smit, D. and Snacken, S. *Principles of European Prison Law and Policy: Penology and Human Rights*. Oxford University Press, Oxford, 2009.
- Tierney, B. *The idea of Natural Rights: Studies on Natural Rights, Natural Law and Church law*. William B. Eerdmans Publishing Company Grand Rapids, 1997.
- Wynn, J. *Inside Rikers: Stories from the worlds largest colony*. New York: St. Martins Griffin, 2001

2. Articles and Contributions to Edited Works:

- Ahven, A. "Recidivism of people released from prison and factors influencing it." *Retsidiivsus Eestis*, 2010, available at: http://www.kriminaalpoliitika.ee/sites/www.kriminaalpoliitika.ee/files/elfinder/dokumendid/retsi_diiivsus_eestis._justiitsministeerium._2010.pdf, accessed at: 16 January 2016.
- Beaupre, M. "Confidentiality, HIV/Aids and prison health care services." *Medical Law Review*, vol. 2 (2), 1994, 149-160.
- Bedau, H.A. "Prisoners rights." *Criminal Justice Ethics* , vol. 1(1), 1982, 26-41.
- Chen, M. and Shapiro, M. "Do harsher Prison Conditions Reduce Recidivism? A Discontinuity-based Approach." *American Law and Economics Review*, vol 9 (1), 2007, 1-29.
- Foster, S.H. "Prison conditions, human rights and Article 3 ECHR." *Public law*, 2005, spr, 35-44.

- Foster, S. "Prisoners voting right: still no joy for the right to vote, but a light at the end of a very long tunnel." *Law Journal*, vol. 18 (2), 2013, 49-53.
- Foster,S. "Reluctantly Restoring Rights: Responding to the Prisoners Right to Vote." *Human Rights Law Review*, vol 9 (3), 2009, 489-507.
- Foster, S. "The prisoners right to vote and the Voting Eligibility (Prisoners) Draft Bill 2012." *Coventry Law Journal*, 2013, nr 18 (1), 131-136
- Fradley,P."Prisoners votes, referendums, and common law rights: A case note on *Moohan v Lord Advocate*." *Oxford University undergraduate law journal*, 2015, 53-62.
- Garmon, J. "Higher education for Prisoners Will Lower Rates for Taxpayers." *Black Issues in Higher education*, vol 18 (24), 2002, 32-33.
- Godd, H. "Regulating reproduction: prisoners' families, artificial insemination and human rights." *European Human Rights Law Review*, vol. 1, 2006, 39-48.
- Hall, CH. "Prisoners Rights in International Law: The impact of the European Convention on Human Rights.", *South African Yearbook of International Law*, vol.11,1985, 78-101.
- Horne, A. and White, I. "Prisoners' voting rights (2005 to 2015)." *House of Commons Library*, SN/PC/01764, 2015.
- Karunesh,T. and Kerndt, P. "Preventing Sexually Transmitted Infections among Incarcerated Men who have sex with men: A Cost-Effectiveness Analysis." *Sexually Transmitted Diseases*, vol. 36 (2), 2009, issue 2, S41-S48.
- Kessler, F. "Natural Law, Justice and Democracy-Some Reflections on Three Types of Thinking about law and justice." *Faculty Scholarship Series*, 2730, 1944.
- Kivimets,K. and Uusküla, A. "HIV testing and counselling in Estonian prisons, 2012 to 2013: Aims, processes and impacts." *Eurosurveillance*, vol. 19 (47), 2013, available at: <http://www.eurosurveillance.org/ViewArticle.aspx?ArticleId=20970>, accessed at: 23 February 2016.
- Ma,Jue. "The European court of human rights and the prisoners and criminal defendants under the European Convention of Human Rights." *International Criminal Justice Review*, vol. 10 (1), 2000, 54-80.
- McClurg, J. "Human Rights Court invalidated voting restrictions on prisoners." *International Enforcement Law Reporter*, vol. 20 (12), 2004.

- Nagin, D., Cullen, F. and Johnson, C. "Imprisonment and Reoffending." *From Crime and Justice: A Review of Research*, vol 38, 2009, 115-200.
- O'neil, L. "The prisoners' rights movement of the 1960s" *ZY: What happened and why it matters*, 2014.
- Playfair, G. "Why Imprisonment Must Go", *Kentucky Law Journal*, vol 53, 1965, 415-431.
- Reyes, H. "HIV in prisons: a reader with particular relevance to the newly independent states." World Health Organization-Europe "HIPP", 2001, 9-18.
- Quigley, B and Godchaux, S. "Prisoner human rights advocacy." *Loyola Journal of Public Interest Law*, vol. 16, 2015
- Roscam, H.A. "Prisoners Right to Healthcare, a European Perspective." *European Journal of Health Law*, vol 20 (1), 2013, 5-19.
- Tarlow, M. and Nelson, M. "The Time is now: immediate work for people coming home from prison as a strategy to reduce their reincarceration and restore their place in the community." *Federal Sentencing Reporter*, vol. 20 (2), 138-140.
- Tartaro, C. and Levy, M.P. "An evaluation of an HIV testing program in the jail setting: results and recommendations." *The Prison Journal*, vol. 93(1), 2013, 57-79.
- Tierney, B. "Natural law and Natural Rights: Old Problems and Recent Approaches" *Review of Politics* 64 (3), 2002, 389-420.
- Tubro, K. "Vangide valimisõigus." *RiTo* 23, 2011.
- Valson, M.C. "Rights of the prisoner: an evolving jurisprudence". Thesis for the award of the degree of doctor of philosophy in the faculty of law. Department of law Cochin University of science and technology, 1994.
- Watson, R., Stimpson, A. and Hostick, T. "Prison healthcare, a review of the literature." *International Journal of Nursing Studies*, vol. 41, 2004, 120-126.
- Williams, J. "Have the Courts Got it Right? The Queen on the Application of Mellor v Secretary of State for the Home Department." *Child and Family Law Quarterly*, vol. 14, 2002, 218-228.

3. Sources available on the Internet

Commentary to recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European prison rules, available at : <http://www.coe.int/t/dghl/standardsetting/prisons/E%20commentary%20to%20the%20EPR.pdf> (accessed on 15.01.2016).

Council of Europe: Committee for the Prevention of Torture, *Report to the Estonian Government on the visit to Estonia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 May to 6 June 2012*, 21 January 2014, CPT/Inf (2014) 1, available at: <http://www.cpt.coe.int/documents/est/2014-01-inf-eng.htm>

Estonian Ministry of Justice, *Retsidiivsus Eestis*, 2010, available at: http://www.kriminaalpoliitika.ee/sites/www.kriminaalpoliitika.ee/files/elfinder/dokumendid/retsi_diiivsus_eestis._justiitsministeerium._2010.pdf, (accessed on 12 April 2016).

Evants, M. “Prisoners and Right to Family Life” *Criminal Law and Justice weekly*, available at: <http://www.criminallawandjustice.co.uk/features/Prisoners-and-Right-Family-Life>, (accessed at 12 February 2016).

Ghedia, J. *Prisoners: rights, rhetoric and reality*. The University of British Columbia, 2012, available at: <https://open.library.ubc.ca/cIRcle/collections/ubctheses/831/items/1.0077495>, (accessed at 14 December 2016).

Institute for criminal policy research, World Prison Brief- United States of America, available at: <http://www.prisonstudies.org/country/united-states-america>, (accessed on 10 April 2016).

Kilkelly, U. *The right to respect for private and family life: a guide to the implementation of Article 8 of the European Convention on Human Rights. Human rights handbooks, no.1*. Council of Europe, 2001, available at :[http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-01\(2003\).pdf](http://www.echr.coe.int/LibraryDocs/DG2/HRHAND/DG2-EN-HRHAND-01(2003).pdf), (accessed on 9 April 2016).

Lavrysen, L. “Education in prison: right to education only protects access in case of “existing” educational facilities (Velyo Velev v. Bulgaria)”, *Strasbourg observers*, 2014, available at: <https://strasbourgobservers.com/2014/06/13/education-in-prison-right-to-education-only-protects-access-in-case-of-existing-educational-facilities-velyo-velev-v-bulgaria/>, (accessed on 6 March 2016).

Riigikohtunik Tõnu Antoni eriarvamus halduskolleegiumi otsusele haldusajlas nr 3-3-1-32-12, 2012, available at: <http://www.nc.ee/?id=11&tekst=222551520>, (accessed on 16 February 2016).

No one wrote me. “Legal Rights of Prisoners – The beginnings of Prisoners rights. Law civil rights era.” available at: <http://law.jrank.org/pages/1762/Prisoners-Legal-Rights-beginnings-prisoners-rights-law-civil-rights-era.html>, (accessed on 10 February 2016).

Personal data protection. Factsheet February 2016 available at: http://www.echr.coe.int/Documents/FS_Data_ENG.pdf, (accessed on 30 March 2016).

UN Joint Programme on HIV/AIDS (UNAIDS), The Gap Report, 2014, available at: <http://www.refworld.org/docid/53f1e1604.html>, (accessed on 15 March 2016).

Table of Cases:

Pervear v. The Commonwealth, 72 U.S. 5 Wall. 475 475, 1866.

Cooper v. Pate, 378 U.S. 546, 1964.

Golder v. United Kingdom, App no. 4451/70, 21th February 1975, European Court of Human Rights [ECtHR]

Ireland v. United Kingdom, App no. 5310/71, 18th January 1978, European Court of Human Rights [ECtHR].

Kotalla v Netherlands, App no 7994/77, 6th May 1978, European Court of Human Rights [ECtHR]

Amann v. Switzerland, App no. 27798/95, 16th February 2000, European Court of Human Rights [ECtHR]

Kudla v. Poland, App no 30210/96, 2000, European Court of Human Rights [ECtHR].

Mellor v Secretary of State for the Home Department, 3 WLR 533, 2001.

Niedbala v. Poland, App no. 27915/95, 4th July 2000, European Court of Human Rights [ECtHR]

RKHKo 3-3-1-41-10, 2010.

Peers v Greece, App no 28524/95, (2001) 33 EHRR 51, 10 BHRC 364, 2001 LR 245, IHRIL 3096 (ECHR 2001), 19th April 2001, European Court of Human Rights [ECtHR].

McGlinchey v. United Kingdom, App no 50390/99, 2003, European Court of Human Rights [ECtHR].

Hirst v. the United Kingdom (No. 2), App no. 74025/01, 6th October 2005, European Court of Human Rights [ECtHR].

A.A.S. v Finland, App no 56693/09, 26th October 2009, European Court of Human Rights [ECtHR]

Pahkomov v. Russia, App no. 44917/08 (first section), 30th September 2010, European Court of Human Rights [ECtHR].

RKHKo 3-3-1-32-12, 2012.

RKHKo 3-4-1-26-12, 2012.

Scoppola vs Italy (no3), App no126/05, 22 May 2012, European Court of Human Rights [ECtHR].

Wisse v France, App no. 71611/01, European Court of Human Rights [ECtHR]

Moohan and another v Lord Advocate. UKSC 67,2014.

Table of Legislative Acts:

Council of Europe, European Convention for the Protection of Human Rights and Fundamental Freedoms, as amended by Protocols Nos. 11 and 14, 4 November 1950, ETS 5

Constitution of the Republic of Estonia, passed by referendum held on 28 June 2012, RT 1992, 26, 349.

Council of Europe: Committee of Ministers, Recommendation Rec (2006) 2 of the Committee of Ministers to Member States on the European Prison Rules, 11 January 2006, Rec (2006)2.

Council of Europe: European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, 1989.

Council of Europe, Committee of Ministers, *Recommendation No.R (98) 7 Concerning the Ethical and Organizational Aspects of Health Care in Prison*, 8 April 1998.

Council of Europe, *Protocol 1 to the European Convention for the Protection of Human Rights and Fundamental Freedoms*, 20 March 1952, ETC 9 article 3.

French Foreign Affairs Ministry: The Commission nationale consultative des droits de l'homme, CNCDH, 1947.

Estonian Imprisonment Act, RT I 2000, 58, 376, 2000.

European Commission for Democracy through Law (Venice Commission) "Code of Good Justitiitsministri 01.04.2003. a määrus nr 23 „Vangistuse ja eelvangistuse täideviimise üle järelevalve korraldamine” 224 § 47 lg 2.

Practice in Electoral Matters. Adopted by the Venice Commission at its 51st Plenary Session (Venice, 5-6 July 2002).

Protocol No. 4 to the Convention for the protection of the Human Rights and Fundamental Freedoms securing certain rights and freedoms other than those already included in the Convention and in the First Protocol thereto. Strasbourg, 16.IX.1963, Protocol no.4, art 2.

UN General Assembly, *Universal Declaration of Human Rights*, 10 December 1948, 217 A (III).

UN General Assembly, *Basic Principles for the Treatment of Prisoners: resolution/adopted by the General Assembly*, 28 March 1991, A/RES/45/111.

UN General Assembly, *Body of Principles for the protection of All Persons under Any Form of Detention or Imprisonment: resolution adopted by the General Assembly*, 9 December 1988, A/RES/43/173.

UN General Assembly, *International Covenant on Civil and Political Rights*, 16 December 1966, United Nations, Treaty Series, vol.999.

UN General Assembly, *Convention on the Elimination of All Forms of Discrimination Against Women*, 18 December 1979, United Nations, Treaty Series, vol. 1249.

UN General Assembly, *International Covenant on Economic, Social and Cultural Rights*, 16 December, United Nations, Treaty Series, vol.993.

United Nations, *Standard Minimum Rules for the Treatment of Prisoners*, 30 August 1955.