

## 1. Introduction

At the international scientific conference which was held last year (October, 27-28) in Novi Sad, organized by the Institute of the Criminological and Sociological Research and the Provincial Protector of Citizens - Ombudsman, just a small number of papers (six out of 40) were dedicated to the elderly and ageing, although the theme of the conference ("From Childhood to the Right to a Dignified Old Age - Human Rights and Institutions") explicitly included this topic. This year's international gathering is dedicated exclusively to the elderly, which undoubtedly indicates the importance of the issue, i.e. the importance of the problems that the elderly face, and to which there is no adequate social response. However, international attention is becoming increasingly focused on the elderly, due to the rapidly ageing of population globally (WHO, 2022)<sup>1</sup> and lot of problems that can't be ignored. It seems that in most countries, especially in poorer ones, such as Serbia (with one of the most rapidly ageing populations in the world<sup>2</sup>), a discriminatory approach to this population prevails, as it is usually seen as a burden that is difficult to bear and that costs a lot. In this regard, it seems a reasonable requirement to adopt internationally binding instruments that will pay special attention to the elderly (Tilovska-Kechedji, 2022: 443-444), as it has been done with other vulnerable categories (e.g. women, children).

Serbia is late when it comes to these topics, but as in many other cases, under pressure from international actors primarily, the state is making steps forward. In the first place (as usual) the strategic framework was created - National Strategy on Ageing 2006-2015<sup>3</sup>, but in practice not much has been done on its implementation, and in the current social discourse discriminatory attitude towards the elderly remains dominant (Knežić, 2010; Solarević, Pavlović, 2018: 61-62; Pavlović, 2019: 182-195; Ljubičić, 2021: 526; Radaković, 2020: 551-567; Ljubičić, Ignjatović, 2022: 446-447, Jovanović, 2022: 492-498).

It seems that the problems of the elderly in Serbia deserve attention in several (internationally recognized) days of the year (e.g. International Day of Older Persons or World Elder Abuse Awareness Day) or in connection with tragic events (brutal elder abuse cases) portrayed in the media in a sensationalist manner. Decision makers think

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<sup>1</sup> The United Nations General Assembly declared 2021-2030 the Decade of Healthy Ageing and asked WHO to lead the implementation (WHO, 2021).

<sup>2</sup> According to the latest census, in the current population of Serbia, 22% of persons are aged 65 and over (Statistical Office of the Republic of Serbia, 2022: 21).

<sup>3</sup> National Ageing Strategy 2006-2015, Official Gazette of the Republic of Serbia, No. 76/2006

about the elderly and their problems most frequently (and conveniently) on special occasions as on October 1<sup>st</sup> or June 15<sup>th</sup> when they prepare suitable speeches, declarations and promises. Usually without fulfilment. (Jovanović, 2022: 498). On the other hand, the state/society seems to be very hypocritical in its reluctance to legalize euthanasia that would secure the right to a dignified death especially for the elderly who are terminally sick and deprived of adequate medical and other types of care, tired of undignified life (Jovanović, 2020: 547-548).

Even with declarations, it does not go smoothly. The National Strategy on Ageing expired in 2015, and a new one has not yet been adopted. But it was promised, too. The Minister of Family Care and Demography, in conversation with the Regional Director of the United Nations Population Fund for Eastern Europe and Central Asia, Florence Bauer, stated that “the development of the National Strategy on Ageing represents one of the strategic goals of the Ministry of Family Care and Demography, in order to create conditions for an even better quality of life and improvement of the position of the elderly in Serbia” (V.C.S. 2023). So, eight years have passed since the expiration of the Strategy 2006-2015 (its goals have not been satisfactorily achieved either), and the new one is in the preparation phase, promising an “even better quality of life” for the elderly. Let us conclude that the life of the elderly in Serbia is, according to the Minister, of good quality already. Is that really so? The quality of life of the elderly in Serbia today is best known by the elderly themselves, and something was said about it last year at the conference in Novi Sad, while this paper will be dedicated to a specific category of the elderly, those who are in a special (worse?) living conditions - in prison, because the interest in this topic is on the rise.

## **2. Ageing in Prison**

In addition to issues related to healthy and active ageing, violence against the elderly in the family and institutional setting and ageism that have been brought into focus globally due to the intensive ageing of the population, a special topic is the ageing of the prison population and the elderly in prison (especially in countries with overcrowded prisons such as the USA, China, Brazil, Russia, Romania, Cyprus, Italy, France... (Penalty Reform International, 2022: 8-10; Aebi et al: 2023: 5-6). The problems associated with it are, in the first place, the health and medical services (Abbing, 2013: 5; Jovanović, Ilijić, 2015: 163; Ricordeau, 2021, Milićević, Ilijić, 2022: 509-512), followed by the specifics of the treatment of old convicts, adaptation of prison infrastructure to their needs, but also many others - such as maintaining ties with the family (Veković, 202: 178-181; Milićević, Ilijić, 2022: 512:514).

Pragmatic systems such as those from the Anglo-American areas (with a large prison population sentenced to long-term prison sentences) deal in particular with the issue of the cost of caring for the elderly in prisons, and pay attention to promoting solutions such as compassionate release (U.S. Department of Justice, Federal Bureau of Prisons, 2013)<sup>4</sup>. It seems that the elderly persons, especially as part of the prison population, are perceived as even heavier burden, because their antisocial behaviour resented the community.

### ***2.1 Who is an Elderly Person (in Prison)?***

There is no universal answer to this question. “Old age” is a loose term that applies most often to everyone of the age of 60 or 65 and over (but sometimes even lower, due to different criteria). The chronological age denoted as “old age” varies culturally and historically, so it is not quite clear what we could name an elderly stage. The United Nations agreed cut-off is 60+ years to refer to the older population, although it should be lower in e.g. Africa: 50, 55 years (World Health Organization, 2013).

There is also a notion “pure ageing” which refers to the inevitable, irreversible decline in organ function that occurs over time even in the absence of injury, illness, environmental risks, or poor lifestyle choices (Stefanacci, 2022), while the literature also points out the necessity of taking into account other correctives (of psychological or social character), so both psychological and social notions of ageing are distinguished<sup>5</sup> thus indicating complications in determining the notion of elderly people, i.e. the impossibility of exact determination of the threshold for the old age in different systems and contexts, or for different purposes.

There is also a difference when it comes to women and men, because they also age differently, and undoubtedly, living conditions are important when choosing the age threshold, so it is also important whether one lives in low-income country or in high-income one (World Health Organization, 2022)<sup>6</sup>.

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<sup>4</sup> It is interesting that in the Report on the State of Prisons at the European level there is no mention of old prisoners (except in the sense that they are most often not engaged for work, because there are no suitable jobs for them (p.49)), while women and children, as well as foreigners, are recognized as particularly vulnerable groups (European Prison Observatory, 2019).

<sup>5</sup> About different definitions and dilemmas about old age: Milanović-Dobrota, 2017; Solarević, Pavlović, 2018: 58-59; Pavlović, 2019: 171-172; Batričević, 2022: 464.

<sup>6</sup> It is worth mentioning that International Network for the Prevention of Elder Abuse (INPEA) supports a single age based standard of 60 years and older only in developed countries. In the case of less developed countries, where old age starts at a younger age any definition of age should allow for a lower threshold as appropriate, but in the case of widows living in less developed countries, no minimum age should apply.

One of the criteria for determining the age threshold can be the criteria for retirement (age), which is 65 years in Serbia (although there are deviations in this regard, because the insurance period is also important, and for women the limit is has been gradually rising: in 2023 - 63 years and 6 months of age, and there is also a category of early old-age pension)<sup>7</sup>. Most developed Western countries set the retirement age around the age of 65. Reaching this age is commonly a requirement to become eligible for senior social programs (Stefanacci, 2022). It is believed that this threshold (65 years and over) was set more than a century ago, when Prince Bismarck, the Chancellor of the German Empire selected age of 65 as the age at which citizens would be able to participate in the national pension plan, for he might have expected that most people would die before reaching this age (Orimo et. al., 2006: 149 ) which is not the case at present, as the lifespan has increased.

Indeed, the old persons have been defined most often as those of a chronological age of 65 years or over (subdivided into groups of young-old (65 to 74 years), middle-old (75 to 84 years) and oldest-old persons ( $\geq 85$  years) or in similar slightly different subdivisions, especially in geriatric medicine (Zizza et al., 2009: 481).

Some researchers (e.g. in Japan) advocate changing the definition and raising the limit to over 75 years (Orimo et al., 2006: 149 and 158). In the same line are experts in demography who “complicate” the definition of ageing and the elderly by pointing out the importance of the thanatological dimension of age (in addition to the chronological one). Namely, for an individual, age across the life course consists of two components: time since birth and time to death, the chronological<sup>8</sup> and thanatological dimensions of age, respectively. In the aggregate, thanatological age is determined by the mortality rate schedule to which a birth cohort is subject until its extinction (Riffe et al., 2016: 2), so the traditional age measure is a backward-looking one (Scherbov and Sanderson, 2019: 20).

We encounter additional complications when it comes to prison population. The definitions of the elderly and the old age are different due to specific conditions, i.e. “accelerated ageing”<sup>9</sup> in prison, so the most common age threshold is lower. Age thresholds for prison population used by different organizations vary widely, from 45 to over 70 (Codd, 2018). However, the most commonly mentioned is the 50 or 55-year threshold

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<sup>7</sup> Art. 19-20 of the Law on Pension and Disability Insurance, Nos. 34/2003, 64/2004 - Decision of the Constitutional Court, 84/2004 - the Other Law, 85/2005 , 101/2005 - the Other Law, 63/2006 - Decision of the Constitutional Court, 5/2009, 107/2009, 101/2010, 93/2012, 62/2013, 108/2013, 75/2014, 142/2014, 73/2018, 46/2019 - Decision of the Constitutional Court, 86/2019, 62/2021,125/2022 and 138/2022.

<sup>8</sup> Chronological age is the dimension most commonly referred to, but it only gives information as to the number of years a person has lived, not his/her individual condition. Besides, there are biological, psychological, functional and social age discussed in Gerontology (International Committee of the Red Cross, 2018: 8-9).

<sup>9</sup> More about various prison studies on prison population ageing and different problems: Milićević, Ilijić, 2022.

(International Committee of the Red Cross, 2018: 13). In England and Wales, the age of 50 has been adopted by Her Majesty's Prison and Probation Service, in so far as the age of prisoners is recognised for operational purposes, for the most of the research literature, prison scrutiny bodies and third-party organisations working in this area adopt this definition, which is based on evidence that the health needs of prisoners are advanced by about 10 years (a 50 year old prisoner would likely have the needs of a 60 year old person in the community (Ministry of Justice, Department of Health and Social Care, Public Health England, NHS England and Improvement<sup>10</sup>). In the U.S., the rapidly growing (old) prison population is also a problem<sup>11</sup> and the threshold for the old age is also set at 50 years (Skarupaski et al., 2018: 157), with basic arguments related to the phenomenon of accelerated ageing.

The accelerated ageing process may be caused by both lifestyle choices and social deprivation affecting a prisoner prior to custody, and by the effects of incarceration itself. The phenomenon can be questioned in the case of those who enter prison for the first time in later life, and were in excellent health. However, a commitment to standard definition is needed in order to establish a strategic approach. However, whatever age threshold is used, it should be based on solid evidence, and should be kept under review.

## **2.2 Elderly Convicts in Serbia**

Serbia has also opted (judging by the latest official document related to the topic - the Strategy for the Development of the System of Execution of Criminal Sanctions for the period 2022-2027<sup>12</sup>) for a lower age limit. It pays more attention (at least declaratively) to old prisoners<sup>13</sup> which is commendable, bearing in mind the aforementioned (about marginalization and discrimination of the elderly in general, when it is to be expected that old prisoners will receive even less attention).

Namely, the Strategy for the Development of the System of Execution of Criminal Sanctions for the period 2022-2027 in the part related to the presentation of the current situation in the field of execution of criminal sanctions reads as follows: "By the

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<sup>10</sup> Written evidence from the Ministry of Justice, Department of Health and Social Care, Public Health England, NHS England and Improvement, [committees.parliament.uk/publications/1740/documents/16889/default/](https://committees.parliament.uk/publications/1740/documents/16889/default/), accessed on: 1. 7. 2023.

<sup>11</sup> There is no global data on the number of older persons in prison. Known rates vary from 1.8% of prison populations in Indonesia to as high as 20% in Japan (Penal Reform International, 2021).

<sup>12</sup> Official Gazette RS, No.142/2022.

<sup>13</sup> In the Strategy for the development of the system of execution of criminal sanctions for the period 2013-2020 (Official Gazette RS, No. 114/2013), the elderly persons are listed as a particularly sensitive category, but their number or increase in number wasn't presented, and the emphasis was more on the training of employees, while in the new strategic framework a step forward has been made.

representation of persons over 50 years of age in the total prison population - 16.7%, Serbia is among the group of European countries that exceed the general statistical averages, and as the percentage of this category of sentenced persons is constantly growing, this requires consequent adjustment of the system of execution of criminal sanctions.” Alongside the fact that the standard of 50-year threshold used in European framework wasn’t used in calculation (which affects the rate of the population in question), it is not entirely clear how this percentage (16.7%) was obtained, i.e. how it was calculated. It seems that the data refers to all persons who have been deprived of liberty (because the data on persons deprived of liberty are previously presented in total and in subdivisions: persons who are detained, those who have been sentenced to imprisonment for a misdemeanour offences, etc.). On the other hand, the same sentence in text indicates the steady growth of “this category of sentenced persons”. However, “sentenced persons” (according to terms used in Strategy 2022-2027) are exclusively adult persons who have been sentenced to imprisonment for a criminal offence. According to the Table 1 (taken from the Strategy), it could be even concluded that the total number of sentenced (incarcerated) persons is decreasing, but according to the stated (unclear) claim in the Strategy - the number of elderly persons sentenced to imprisonment (who are 50+ years old) is increasing.

Table 1: Number of Persons Deprived of Liberty as of 31 December 2013-2021

<b>Deprived of Liberty</b>	<b>2013.</b>	<b>2014.</b>	<b>2015.</b>	<b>2016.</b>	<b>2017.</b>	<b>2018.</b>	<b>2019.</b>	<b>2020.</b>	<b>2021.</b>
Sentenced persons	7330	7737	7670	7980	8081	7934	7862	7301	7230
Security Measures	213	387	429	489	549	657	679	639	680
Detained persons	1894	1593	1538	1732	1616	1691	1903	1959	2046
Juvenile prison	24	14	17	19	20	27	25	21	20
Educational Measures	215	228	194	199	192	177	190	183	171
Persons Punished for Misdemeanours	355	329	216	253	349	385	418	437	407
<b>Total</b>	<b>10031</b>	<b>10288</b>	<b>10064</b>	<b>10672</b>	<b>10807</b>	<b>10871</b>	<b>11077</b>	<b>10540</b>	<b>10557</b>

However, according to the (latest) available published report by the Administration for the Enforcement of Criminal Sanctions (2013) on persons sentenced to imprisonment, who are (again) older than 50 years, the rate is 14.3%, compared to 12.9% in 2012

(Ministry of Justice of the Republic of Serbia, Administration for the Enforcement of Criminal Sanctions, 2013: 112). So, we might really talk about the increase of the older prison population. It indicates that the aforementioned percentage (16.7%) might be accurate, which underlines the claim that the number of this category of prisoners is growing.

However, in European penal institutions - sixteen percent (16.1%) of the inmates were aged 50 or over. But, due to the problems in exact and comparable data collections - it wasn't possible to confirm the hypothesis that prison populations are ageing across Europe (such analysis will only be possible once a few more years of data are available) (Aebi et al., 2022: 3-4).

Official statistics in Serbia offer data on the number of sentenced perpetrators (for criminal offences) by age and in the last five years there are no significant changes. The percentage of those who have reached the age of 50 or over ranges between 19% and 20% (2018-2022) (Statistical Office of the Republic of Serbia, 2023: 2), but all of them are not sentenced to prison (suspended sentence is one of the sanctions, even the most common one). So, we cannot speak about the growth of the prison population, based on this data.<sup>14</sup> But, this rate was lower ten years ago: in 2003 it was 16.9%, while in 1999 it was - 14.7% (Statistical Office of the Republic of Serbia, 2004: 3), which certainly suggests the conclusion of an increase in the rate of older perpetrators sentenced of criminal offences (but not necessarily sentenced to prison). In short, it is necessary to carry out more focused research, with a threshold of 50 years in order to keep up with the European standard in prison studies.

The data on the imposed sanctions also speaks in favour of the growth (but not dramatic) rate of prison sentences in the structure of imposed sanctions: in 2018 it was 24.9% (and in the following years it moved even below this number), and in 2022 it was 27.5%. When it comes to the length of prison sentences, it was found that the rate of prison sentences lasting over 1 year in the observed period increased slightly, between 9 and 11% (e.g. in 2018 it was 9.3%, 2019 - 10.1% and in 2022 - 10.9%), so it could (only) be assumed that more elderly people were sentenced to longer prison sentences. Comparisons are made with the period 1999-2003 when imprisonment participated in a higher

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<sup>14</sup> Inaccuracies in the presentation of data are also present in the Statistical Releases of the Statistical Office of the Republic of Serbia. For example, the last 2022 Statistical Release (in English) provides data on convicted adult perpetrators by age and sex, which could confuse researchers, because convicts are often also known as "prisoners" or "inmates", while the Statistical Office of the Republic of Serbia, in the interpretation of certain terms, does not give an interpretation of the term "convicted person" at all, but it gives an explanation of the term "sentenced person" (which is not even used in the Statistical Release (Ibid: 12). Therefore, it is not surprising that data (on the increase of the elderly prison population) can be misinterpreted (see: Milićević, Ilijić, 2022: 504).

percentage in the structure of the imposed sanctions (in 2003 as high as 32%), but there was also a higher rate of shorter prison sentences (Statistical Office of the Republic of Serbia, 2004: 2). However, a significant, faster increase in the rate of the so-called house arrest has been observed - in the last observed year (2022) it amounts to 11.2% in the structure of imposed sanctions, while in 2018 it was 7.4% (Statistical Office of the Republic of Serbia, 2023: 3). This increase, very interesting in general (especially regarding preventive effects of the house arrest) needs to be particularly addressed.

The unequivocal answer to the question - whether Serbia has a problem with the increase in the rate of elderly convicts is overshadowed by the latest report on the state of prison population in Europe (Aebi et al., 2022). According to this report, Serbia is among the countries with a low percentage of persons aged 50 or over in the prison population (the score is between 5.1% and 25% lower than the European median value) (Ibid: 4). The latest report on Serbia's progress in European integration does not highlight this problem, although it deals with topics such as detention, prevention of torture and access to medical care in prison, but in general) (European Commission, 2022: 36-37).

However, according to the allegations (in the presentation of the current situation in the system of enforcement of criminal sanctions in the Strategy 2022-2027), Serbia made efforts to improve the position of elderly convicts and those with disabilities in terms of infrastructure adaptation - in 2015, parts of the Correctional Facility in Požarevac were renovated for their accommodation. Elderly convicted persons are mentioned in the part related to measures and activities for the improvement of human rights of particularly vulnerable groups of convicted persons (through improvement of accommodation conditions taking into account their specific needs; training of employees in institutions for the execution of criminal sanctions in order to improve the treatment of elderly persons). The improvement of the position of the elderly in prisons could be expected through the Strategy 2022-2027 goals elaboration and implementation. Recognition of the elderly convicts as a sensitive category that requires special attention is certainly commendable. In the Strategy 2013-2020, they were not given so much attention, so we can conclude that a significant step forward has been made in strategic framework, and as stated previously improvement has been made regarding adapted accommodation of elderly convicted persons.

It is also important to mention that (in 2019) the possibility of early dismissal was envisaged (according to the enforcement judge's decision, upon the proposal by the warden at the correctional facility<sup>15</sup>) for elderly convicts (and those with serious illness or disabilities, although old age is usually associated with these problems). It is in line

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<sup>15</sup> Art. 184a Law on Execution of Criminal Sanctions, Official Gazette RS, No. 55/2014, 35/2019



with the goals of compassionate release promoted in other systems due to increase of the elderly prison population.

### **3. Study on the Elderly in Prison - Correctional Facility in Niš**

#### ***3.1. Methodological Framework of the Study***

The research on the elderly in prison was conducted in July 2023 in the Correctional Facility in Niš<sup>16</sup> by taking insight into the official records and files of convicts. The age of 65 years was taken as a threshold. We collected data on criminal offences committed by old convicts, their past (criminal), attitude towards the offences they committed, and special preventive effects of punishment, as well as other characteristics, i.e. differences in relation to other convicts. In particular, the relationship with the family was taken into consideration, bearing in mind the importance of family ties in the treatment process and post-penal acceptance and support. We started from the assumption that the relationships of the elderly with family and loved ones are often damaged even in the population outside the prison walls, more often due to the discriminatory attitude towards older family members as evidenced by research at the international and at the national level (the elderly are often victims of abuse and neglect in a domestic setting, but also in an institutional one (which replaces the family - in nursing homes for the elderly, etc.) (World Health Organization, 2022; Jovanović, 2022; Ljubičić, 2021).

However, we have opted for the “standard” threshold for entering the world of the elderly - 65 and 65 + years, bearing in mind the previously presented critiques of the standard criteria for determining old age, and the proposals to raise the threshold. If the “prison standard” of 50 years was taken as a threshold, old convicts from our sample would be classified as average old.

Our sample included those who were 65 years old at the beginning of the research, although some came to serve the sentence earlier, as well as those who came to serve the sentence at 65 years or older. However, we didn't have pretentiously set goals, except for the idea to draw attention to this category of the elderly, which is found in specific living conditions, and its peculiarities. They were male exclusively, as women serve their sentences in Correctional Facility for Women in Požarevac, and in a far smaller number participate in the total number of convicted persons.

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<sup>16</sup> The survey was conducted with the approval of the Director of the Administration for Enforcement of Criminal Sanctions, Mr. Carević. In the process of data collection, authors had help of Nikola Ninković (sociologist) and Jelisaveta Đorđević (psychologist) to whom they thank a lot.

### 3.2 Research Results

On July 7, 2023 when the research activities began, there were 53 convicts who were 65 years of age or older, which is 3.45% of the total convict population in the facility on that day. Convicted persons who, at the time of arrival at the facility, met the set criteria in terms of age, i.e. they entered the facility with 65 years or older, make the majority of the sample - 66.04%, while those who entered the facility in younger age, but at the time of the start of the research turned 65 or older make 33, 96%.

Table 2: Criminal offences<sup>17</sup> of the old convicts

<b>Criminal offence</b>	<b>Number of inmates</b>
Art. 113 CC - Murder	8
Art. 114 CC - Aggravated Murder	13
Art. 121 CC - Serious Bodily Injury	1
Art. 178 CC - Rape	4
Art. 179 CC - Sexual Intercourse with a Helpless Person	2
Art. 180 CC - Sexual Intercourse with a Child	2
Art.181 CC - Sexual Intercourse through Abuse of Position	1
Art. 182 CC - Prohibited Sexual Acts	1
Art. 194 CC - Domestic Violence	1
Art. 204 CC - Aggravated/Compound Larceny	1
Art. 208 CC - Fraud	4
Art. 223 CC - Fraud in Conducting Business Activity	1
Art. 227 CC - Abuse of Position of a Responsible Person	1
Art. 229 CC - Conclusion of a Restrictive Agreement	1
Art. 246 CC - Unlawful Production and Circulation of Narcotics	8
Art. 348 CC - Illegal Production, Possession, Carrying and Circulation of Weapons and Explosives	4
	<b>53</b>

<sup>17</sup> Criminal Code (hereinafter: CC), Official Gazette, Nos. 85/2005, 88/2005 - correction, 107/2005 - correction, 72/2009, 111/2009, 121/2012, 104/ 2013, 108/2014, 94/2016, 35/2019 .

The most common criminal offences are those with elements of violence (62.26%) of which one in three (30.3%) committed a criminal offence against sexual freedom. The following are offences against human health (15.09%), against property (9.43%), against public order and peace (7.55%) and offences against economic interests (5.66%). Almost half of the sample are recidivists (49.06%). The majority were sentenced to prison terms of at least five years or more - 73.58%. The harshest sentences were imposed on those convicted of crimes against life and body, followed by the offences against sexual freedom. Lower sentences (less than five years of imprisonment) are more common in the categories of those convicted of crimes against property, economic interests, against human health and against public order and peace (three years of imprisonment is the most common conviction).

### 3.2.1 Offences against Life and Body

*(Art. 113 CC, Art. 114 CC, Art. 121 CC)*

The elderly inmates were most often convicted of crimes against life and body (41.51%). Half of them came to serve their sentences at the age of 64 or under. Half of them are recidivists (most often their previous sentences were suspended sentences or fines, while two convicts were previously convicted of murder (in one case of murdering a spouse). Most of them (95.45% - all but one convict) are in the category with a medium or low degree of risk (a high degree of risk was determined in one case, in which the medium level was determined subsequently).

The longest prison sentences dominate in this category of convicts, and the most frequent one is that of 10 years of imprisonment or more (four sentences of 20 years, one of 30 years and one of 40 years of imprisonment). Just in one case (for serious bodily injury) it was three years in prison. They rarely confess to their criminal acts (most of them overemphasize the influence of situational factors and minimize their own responsibility).

The victims are people they previously knew - most often wives, common-law wives, ex-wives/common-law wives or emotional partners, or other family members, neighbours, colleagues. The offences were usually preceded by long-standing poor, dysfunctional relations with victims.

Rare visits and receipt of packages were recorded. The problems with alcohol as well as problems in the primary family were also recorded. Educational attainment is poor: 40.91%: completed primary school (40.91%); 18.18% of convicts have incomplete primary education; 36.6% - secondary education and one convict has higher school education. Most of them have developed work habits, they were employed (as merchants, drivers, house painters), but a small number of them work at the facility, due to limited

work ability, and health problems (characteristic for the general population of older age). Their behaviour is adapted to the house rules of the facility.

### 3.2.2 Offences against Sexual Freedom

(Art. 178, Art. 179, Art. 180, Art. 181, Art. 182 CC)

Offences against sexual freedom were committed by 18.87% of the elderly convicts. The majority (70%) came to serve sentences at age 65 or older. Five (the half) of them have been convicted before (three persons of criminal offences with elements of violence). The most common offence is rape, followed by the sexual intercourse with a helpless person and sexual intercourse with a child. Long prison sentences prevail - the shortest is five years of imprisonment (just in one case - four), and the longest are 17 years and five months and 18 years of imprisonment (for sexual intercourse with a helpless person).

The majority of convicts (60%) are medium-risk offenders, while others are high and very high-risk offenders. For one convict, the degree of risk was not determined (during the survey), because he was in a Special Prison Hospital. Everyone completely denied the crime, and everyone knew the victim previously. The victims were most often from a close, familiar environment (except in one case).

Most of them have family problems. One in three were married or in a partner relationship at the time of the crime commitment, and all of them were married or married at some time in their lives. Although most of them grew up in a complete, functional family, visits and packages are most often absent.

The educational attainment is poor. Most of convicts completed primary school, 30% completed secondary school, and one has uncompleted primary education. Most of them have developed habits, and they had employment prior to conviction. However, a small number of them work, mostly due to limited working ability and health problems (common for the elderly population). Half of the convicts have problems with alcohol. Their behaviour is adapted to the house rules, and violations occur rarely.

The elderly convicted of sexual offences against helpless persons or children are the most vulnerable category due to widespread odium from other convicts and even staff members (e.g. employees of the security service). They are easy targets of other convicts due to frailty of old age and inability to adapt to prison life and defend themselves (employees of the security service manage to turn a blind eye when these convicts are molested by other inmates).

### 3.2.3 Offences against Marriage and Family

(Art. 194 CC)

Only one elderly person was convicted of the domestic violence. He came to serve his sentence at the age of 70, and at the time of conducting the research he was 73 years old. He was sentenced to eight years in prison. He is a multiple recidivist (attempted murder, domestic violence). He committed the offence against his ex-wife and daughter, after he served the prison sentence for the attempted murder of his ex-wife. He has a high degree of risk (66 on a small questionnaire), and subsequently - high (109 on a large questionnaire).

He grew up in a dysfunctional family. His parents divorced when he was a child, and he saw his father several times in his life. He had a tumultuous and troubled emotional life, he had aggressive outbursts towards all partners and some other family members. He has been on records of the Centre for Social Work since 1976 due to violence against his sister, first wife, son, second wife and daughter. There are no visits and packages. He denies committing a crime, and felt no remorse. He is a beneficiary of financial social assistance, and a problem with alcohol is recorded. Also, he is verbally aggressive (but he has not been disciplinary sanctioned). He doesn't work at the facility due to limited ability to work.

### 3.2.4 Offences against Property

(Art. 204 CC, Art. 208 CC)

Criminal offences against property (the most common offences in the general population of convicted persons) were committed by five persons from the sample (9.43%). Four of them came to serve their sentences at the age of 65 or older.

All of them are multiple recidivists (of various criminal offences). Committing criminal acts is a pattern of their behaviour. No one confesses to the commission of criminal offences. They overemphasize the impact of the situation, and minimize their own responsibility.

A turbulent emotional life, frequent changes of partners and infidelity were recorded, especially expressed in the perpetrator of the criminal offence referred to in Art. 208 KZ. However, periodic or frequent visits by family members are recorded, the reception of packages is relatively common. In the case of the perpetrator of fraud (Art. 208 CC) high education, developed work habits and long-term work experience (as entrepreneur) are recorded.

A small number of them work at the facility, mostly due to limited working ability, and health problems (nothing that differs from problems affecting the general population of older age).

### 3.2.5 Offences against Economic Interests

(Art. 223 CC, Art. 227 CC, Art. 229 CC)

Three convicted persons committed criminal offences against economic interests. Two came to serve their sentences under the age of 65. All convicted persons were previously convicted. Different degrees of risk were determined: one person is low-risk offender, one medium and one high-risk offender. All of them diminish their responsibility, denying criminal activities. They all have high or higher education, they were employed prior to conviction, but they are not fully engaged at the facility due to limited ability to work. They have health problems, common in the population of older age.

They have good family relationships and family support. Their behaviour is in accordance with the house rules of the penitentiary institution.

### 3.2.6 Offences against Human Health

(Art. 246 CC)

Crimes against human health were committed by eight convicted persons (15.09%) and the majority (six of them) came to serve their sentences at 65 years of age or older, 50% were recidivists.

Most persons (six) are medium-risk offenders, one person has low and one high degree of risk. All persons minimize their responsibility in the commission of a criminal offence, transferring responsibility to other persons or justifying themselves by the situational factors. One person committed a criminal offence by selling a psychoactive substance, while the others committed a criminal offences by growing marijuana or installing a laboratory on their property to grow the plant. They committed crimes for material gain.

All convicted persons are divorced, have multiple marriages behind them, and children. They come from complete primary families. Visits and packages are rare.

Five convicted persons completed primary school, one has incomplete primary education, and two convicts have higher education. Most of the convicted persons have developed work habits, one person is a social assistance beneficiary. At the facility, a small number of them work, mostly due to limited working ability, and health problems (but nothing that differs from the problems that affect general population of older age).

### 3.2.7 Offences against Public Order and Peace

(Art. 348 CC)

Four persons were convicted of offences against public order and peace and all of them came to serve their sentences at the age of 65 or older. Three persons are recidivists. Two persons are medium-risk offenders, and one is high-risk offender (one convict is still in the admission department).

Just one convict confesses to the commission of the offence (he concluded a plea agreement). However, he stated that he has been a passionate collector of firearms and “he saw nothing controversial” in the commission of the offence, thus expressing the denial.

All convicted persons have children, one is still married (but the marriage is dysfunctional), and two persons are divorced. Periodic visits and occasional receptions of packages were recorded. One person has a problem with alcohol, and three convicts originated from a dysfunctional family. Their behaviour is in accordance with the house rules.

### ***3.3 Discussion***

Most convicted persons are medium-risk offenders (74.51%), a high degree of risk was found in 15.69%, low level of risk participates with 7.84% and very high with 1.96% (two convicted persons had no established degree of risk). This data indicate that committing criminal offences does not constitute an adopted lifestyle for most of old convicts. The adopted pattern is clearly emphasized in those who committed a criminal offences against property. Also, 49.06% of the elderly prison population were previously sentenced, which is 20% less than the average percentage at the facility - 69.81%.

On the other hand, they usually do not confess to the criminal offence, they diminish their own responsibility and overemphasize the impact of the situation and other people, thus indicating that they do not have a clear insight into the consequences their behaviour has caused. The same results are presented in other studies, especially those dealing with the problem of domestic/partner violence (Jovanović, 2010: 237; Simeunović-Patić, Jovanović, 2013: 32-33). The most prevalent offences of the old convicts are offences with elements of violence, while the most common offences in general prison population are property crimes (Aday, Krabill, 2006: 237).

The elderly convicts predominantly committed offences with elements of violence against closest persons (most often female, actual or ex-spouse and children or other family members, neighbours). As most of them have dysfunctional relationships in the family (family of origin as well as in family of procreation), it could be concluded that the violence was most likely present before (prior to conviction and admission to prison), as it is one of the well-known characteristics of domestic / partner violence or violence against children (its duration, under-reporting and dark figure of crime). It certainly indicates the dangerousness of these offenders (for family members and other vulnerable persons from their closest surroundings) as well as serious failures in state/social response to the problem in earlier stages. That fact also characterizes the domestic/partner violence (Jovanović, 2010: 35-58; Simeunović -Patić, Jovanović, 2013:143-169).

As previously stated, family relationships of elderly convicts are considered problematic. Dysfunctional relationships in the family of origin are recorded, and the relationships in their own family are also broken, superficial, and distant; some convicts were already on the records of the centre for social work due to violence, neglect, etc. Therefore, it is not surprising that the majority of convicts lacks support of the family. There are no visits and packages (or they are extremely rare), which is to be expected given the previously mentioned (about dysfunctional relations in the family, and violence). However, broken family ties are only further worsened by prison deprivation, so this problem is a special challenge from the aspect of treatment, special-preventive effects, and post-penal acceptance.

One of the features of the old convict category is that they came to serve their sentences with developed work habits, although most often they are not engaged at the facility due to limited working ability caused by age and health conditions. As they reached age for pension, they could decide if they would be engaged in available activities or not. Most of them opt for no as an answer, which probably couldn't be the option if they were not deprived of liberty. There is clear demarcation line between the elderly prison population and the rest of convict population which most often commits criminal offences for material reasons.

The highest percentage of elderly convicted persons completed primary school (41.51%), 30.19% completed secondary school, 11.32% completed higher school or faculty. The rate of those with incomplete primary education is 16.98%. Regarding educational attainment, this category of prisoners also differs from the rest, since the prison population is significantly less educated than the general population, while the older prison population is somewhat closer to the national average educational level<sup>18</sup>. Given that this category is not particularly interested in acquiring new skills, and knowledge, this data does not seem so bad (in addition to fact that they were employed prior to incarceration more often than other prisoners, who committed offences for material reasons).

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<sup>18</sup> The results of the 2022 Census show that more than half of the population aged 15 and over completed secondary school (53,1%), primary school (eight years) was completed by 17.8% of population, 22.4% gained a diploma of the high or higher school, while 6.3% of population are without school or completed less than eight grades of primary school.(Statistical Office of the Republic of Serbia, 2023).



#### 4. Concluding Remarks

Population ageing is a problem that raises a number of questions that require well-tailored solutions. Some of them are discrimination against the elderly, inadequate care and even violence in the institutional and family settings. One of the questions that is recently raised is related to prison conditions and specific needs of the elderly convicts. Namely, the ageing of the population in general and the tightening of penal policy are inevitably reflected on penitentiary institutions, so it is important to draw attention to the elderly in prison conditions. This issue can be viewed from the aspect of costs, as do the systems with a growing population of elderly convicts, and wider implementation of the compassionate release, but also from the aspect of protecting their human rights and their recognition as vulnerable category.

One of the problems of the elderly convicts (based on our small survey, as well as on comparative studies) is the tearing of family ties that have already been dysfunctional, and additionally violated by the commission of (violent) offences against family members or other close persons. The question is how to restore the relations that are generally relevant in the treatment of the convicted persons, and how to prepare them for the release and post-penal acceptance. The situation is additionally complicated by the fact that convicts deny or diminish their own responsibility for the criminal offence, so it is seems that is too late to work on the broken relationships, as the great contribution to that has been given by convicts themselves. It is clear that the promotion of non-violent communication, tolerance in interpersonal contacts, and timely and adequate (preventive) response when it comes to dysfunctional family relationships and domestic violence at early stages are of great importance.

Limited working abilities of older convicts, due to age and health problems, are also a challenge, thus finding adequate forms of work engagement, and their promotion would certainly be important. When it comes to medical care, we could even conclude that the elderly are even in the better position in prison than outside it, because special attention is paid to the health care of the convicted persons in general (they have basic health care at the facility, and the necessary specialist examinations and interventions do not have to be scheduled and waited for several months or even years).

Bearing in mind that these are persons who are not fully capable of work, and would most likely be in poorer living conditions outside facility, without family support and acceptance, with poor chances to obtain adequate medical care, it seems that at least some of them are not in such a bad situation in prison (they certainly should be asked about that, so this could be the topic of some future research). Namely, it is a well-known phenomenon that those who are on social margins and do not have much choice, even

rationally choose to commit a crime in order to spend at least some critical period of time (e.g. winter) in prison.

In the worst position are the elderly convicted for sexual offences against helpless person or children. They are the most vulnerable category in prison (regarding their safety) as they are targeted by other convicts (as well as by some staff members) who had odium towards sexual offenders whose victims are children and helpless persons. Safety of this category of elderly convicts is a special challenge for penitentiary institution, because they are not able to adapt and defend themselves due to old age frailty and lack of criminal experience (unlike younger offenders of the same offences).

Staying in a prison could be compared to staying in institutions of another nature, designed for the care of the elderly in which the elderly often do not come voluntarily (Ljubičić, Ignjatović, 2022), and in which there is violence and suffering due to inadequate care by those closest to them, as well as by those professionally in charge of providing care (Ljubičić, 2021; Jovanović, 2022). Old convicts are undoubtedly one of the responsibility of the society and especially of the penitentiary system, but their position must also be addressed within the wider context of preventive activities and care for the elderly, taking into account the challenges that incarceration brings.

The conviction and incarceration must not be a basis for forgetting about the obligations of respecting human rights of this specific and more sensitive category of the elderly. In the first place (and having in mind the inability to establish the exact definition of an “older person/convict”), the most important thing to bear in mind is that convicts (in general) need as far as is possible to be treated as individuals and receive approaches that are tailored accordingly. Consideration of whether a prisoner was “old” and required different approach within custody should be based on an assessment of individual needs, rather than chronological or other age.

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