

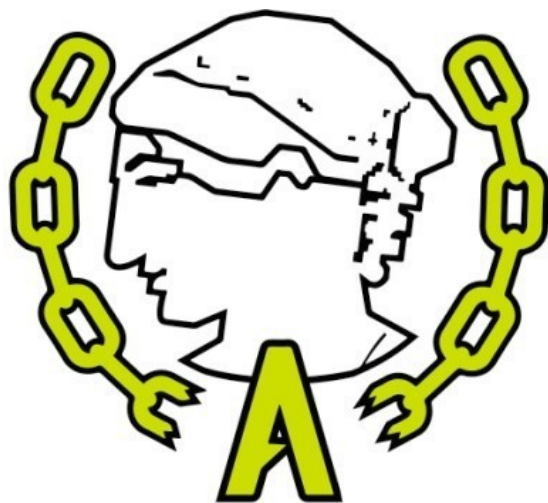
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**Have prisons learnt from Covid-19?
How the world has reacted to the pandemic
behind bars**



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N. 1/2020 HAVE PRISONS LEARNT FROM COVID-19? HOW THE WORLD HAS REACTED TO THE PANDEMIC BEHIND BARS

edited by Susanna Marietti and Alessio Scandurra

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BULGARIA - Covid-19 and the prison system in Bulgaria

Krassimir Kanev¹

According to the official information from the Chief directorate execution of punishments, the authority responsible for the management of all penitentiary institutions in Bulgaria, since the beginning of the global health crisis up to 18 August 2020 there has been only one prisoner infected with the coronavirus in Bulgaria. He is held in the Plovdiv prison. The total number of the penitentiary staff infected as of this date was 12. Most of them were from the Plovdiv region – 4 in the Plovdiv prison, 3 in the pre-trial detention arrest in Plovdiv. The Plovdiv cluster was formed in the beginning of July and the infection was brought to the prison by a member of the staff. The other cases include one staff member in each of the following penitentiary institutions: Smolyan open type prison; Bobov Dol prison; Sofia prison; Razdelna open type prison and one person from the Regional administration for the execution of punishments – Kyustendil (not directly involved with the prison service)². This is an infection rate among prisoners of less than 150 per 1M, 17 times less than the infection rate among the total Bulgarian

population (2,603 per 1M according to the official statistics as of 15 September 2020). Thus, even if we take into account that the prison population is younger than the country's average and that there might have been cases of infection among prisoners which went unnoticed due to the lack of symptoms, the conclusion that as a whole the level of infection in the Bulgarian prisons has been low, is valid. What are the reasons?

Bulgaria was and continues to be among the European countries where the coronavirus is spread less. As of 17 September 2020, it occupied 81st place in the ranking of Worldometer by the general infection rate and 99th place by total cases per 1M of population, way below the European and the world average³. Despite the fluctuation of the infection rate, it maintained these low levels since March 2020. At the time of the European onset of the infection in February-March 2020, the Bulgarians had very little interaction with those centers where it spread initially. In addition, the schools and several other institutions (including social care homes) were subjected

to a flu quarantine with strict isolation already in February, and on 5 March a nation-wide flu epidemic was declared. This was three days before the first two Sars-CoV-2 infections were registered in Bulgaria on 8 March 2020.

The prison system took measures for monitoring the conditions of prisoners with possible symptoms of coronavirus already at the end of February. On 26 February 2020, the Deputy Minister of Justice issued a decree ordering a 14-day general monitoring of every newly arrived prisoner and of every staff member who had returned from any foreign country after the second half of January; daily monitoring of every patient with flu-like symptoms; temporary termination of all visits to the prisons and a variety of measures for maintaining hygiene, including daily disinfection of cells and working premises, wearing of masks for all persons with flu-like symptoms, distribution and use of disinfectants with at least 60% alcohol content. Doctors and other healthcare personnel in the prisons were obliged to work with masks and gloves. Prisoners with milder flu-like symptoms which do not correspond to Sars-CoV-2 were to be treated in the prisons' healthcare units and those with heavier symptoms were to be referred to hospitals outside of the prison system. A definition of the Sars-CoV-2 case is enclosed in the order⁴.

The initial response of the Bulgarian authorities to the outbreak of the coronavirus in general was very restrictive. Already on 8 March 2020 the Minister of Health issued an order prohibiting all cultural events, including cinema, and all sports events with public⁵. On 11 March 2020, all visits to social

institutions were prohibited by another order of the Minister of Health⁶. On 13 March 2020, with only 30 active coronavirus cases, the Parliament declared unanimously a state of emergency. On the same day, the Minister of Health issued an order providing for the closure of a number of businesses, obliging others to introduce teleworking and closing all schools and universities⁷. Ten days later, the Law on the Measures and Actions during the State of Emergency was passed authorizing the Minister of Health to order any restrictive measures provided for by any law⁸. No amendments in the legislation were made introducing safeguards against arbitrary use of executive power. The existing one contains inadequate safeguards. Thus, shortly after the beginning of the epidemic, the isolation period for the infected persons (amounting to a deprivation of liberty stricter than a house arrest) was fixed by an order of the Minister of Health at 28 days, with no possibility for intermediate Pcr testing, which may lead to earlier release from quarantine in a case of a negative result. The order provided that the imposition of quarantine could be appealed in the administrative court but it was not obliged to hear the case and to issue a decision while the person is under isolation. Moreover, there was an obligatory isolation for treatment for some categories of persons in hospitals and, upon release after a negative Pcr test, the person was compulsory isolated by an order of health authorities for another 28 days at home, even without any symptoms. The Parliament adopted severe criminal sanction for breach of isolation. These severe conditions aimed at relieving the authorities from regular monitoring

through Pcr testing (a relatively expensive procedure in Bulgaria) of the conditions of the infected persons and imposing on them in the first place the burden of protecting the rest of the population from infection. The measures were subsequently eased.

The first measures affecting the Bulgarian criminal justice system and prison conditions were introduced with a decision of the Judges' College of the Supreme judicial council (Sjc) on 16 March 2020. According to this decision, all criminal proceedings were to be temporarily suspended, with the exception of urgent ones, involving the imposition of and the judicial control on the remand measures, protection of victims, removal of the accused from office, placement of the accused in psychiatric institutions and securing of evidence². As this decision had effects on the rights of the accused (e.g. on the right to a trial within reasonable time), its adoption without any delegation of law-making powers is of a questionable constitutionality. Perhaps mindful of the latter, the authorities introduced the above measures with the amendments to the Law on the Measures and Actions during the State of Emergency of 9 April 2020.

The above measures had the immediate effect of reducing the number of prisoners and allowing for more personal space in the Bulgarian prisons. No new prisoners were entering prisons while the process of releasing those who served their sentences continued. The pre-trial arrests however were adversely affected, as those detainees who otherwise would have been sentenced and would have entered the prisons remained there. These facilities in Bulgaria are with a much more restrictive regime and worse material conditions

than the prisons. On the other hand, the interaction between the detainees and the staff, as well as between the detainees, is minimal.

The initial restrictive measures relating to the prison conditions provoked concerns in the human rights community since the beginning. On 18 March 2020 the Bulgarian Helsinki Committee (Bhc) wrote to the Committee on Legal affairs of the Parliament with an opinion on the Draft Law on the Measures and Actions during the State of Emergency in advance of its adoption. There the Bhc expressed concerns, among other things, about the provision in the draft prohibiting all visits to the prisons and pre-trial arrest. It viewed the prohibition as overbroad and unconstitutional¹⁰.

On 20 March 2020 the Bhc addressed in a statement the suspension by the Judges' College of the Sjc of the proceedings related to challenging different types of isolation in the prisons, as well as to the preventive remedy against torture, inhuman and degrading treatment and punishment in the prisons and pre-trial arrests. The remedy in the form of accelerated proceedings before the administrative courts triggered by a complaint from a detainee was introduced in 2017 in response to the pilot judgment of the European court of human rights in the case of Neshkov and others v. Bulgaria of 2015¹¹. In its statement the Bhc argued that all these proceedings concern a right, which is non-derogable during the state of emergency and therefore there can be no justification for the suspension of the proceedings allowing for the redress of the detainees' grievances¹².

All of the above concerns were addressed

in the Law on the Measures and Actions during the State of Emergency. The blanket prohibition of the prison visits was removed in the final version of the law and the proceedings related to the prevention against torture, inhuman and degrading treatment in the prisons were not suspended.

The state of emergency in Bulgaria was prolonged by the Parliament once on 3 April 2020 and ended on 13 May 2020. A number of restrictive measures were eased by the Minister of Health already by its end, but many continued subsequently while the country remained under an *extraordinary epidemic situation*. According to the latest information from the Chief director for execution of punishments, the following anti-epidemic measures are in force in the Bulgarian prisons and pre-trial arrests:

- wearing of personal protective equipment by the medical staff while at work;
 - arrangements for treatment of Covid-19 patients at external medical facilities¹³.
- 14-day quarantine and monitoring for symptoms of all newly-arrived prisoners and detainees;
 - 14-day active monitoring for symptoms of all the staff who travelled to another country;
 - isolation of prisoners with symptoms;
 - maintaining of personal hygiene;
 - observance of the *respiratory etiquette*;
 - wearing of masks by the prisoners during transfers (but not inside the prison);
 - daily disinfection of all premises;
 - frequent ventilation of all premises;
 - training of medical staff on dealing with the coronavirus;

Notes

¹ **Krassimir Kanev:** is the Chairperson of the Bulgarian Helsinki Committee.

² Information from Decision No. 1-3443 from 18 August 2020 of the Chief director for execution of punishments in response to a request for access to public information by the Bulgarian Helsinki Committee. Here and below, except in note 2, all the references are to documents and publications in Bulgarian.

³ See: <https://www.worldometers.info/coronavirus/#countries> (accessed 17 September 2020).

⁴ Ministry of Justice, Order No. JIC-04-102 from 26 February 2020.

⁵ Minister of Health, Order No. ПД-01-117 from 8 March 2020.

⁶ Minister of Health, Order No. ПД-01-122 from 11 March 2020.

⁷ Minister of Health, Order No. ПД-01-124 from 13 March 2020.

⁸ National assembly, Law on Measures and Actions during the State of Emergency, 24 March 2020. As the law was finally adopted only on 24 March, many of the orders of the Minister of Health, which imposed such restrictions before that date, were with a questionable legality.

⁹ Decision of the Judges' College of the Supreme judicial council on preventive measures for Covid-19 in the period 13 March – 13 April 2020.

¹⁰ *Opinion of the Bhc on the draft law on the measures during the state of emergency*, at: <https://www.bghelsinki.org/bg/news/20200318-opinion-statement-emergancy-situation/> (accessed 20 September 2020).

¹¹ Law, Amending and supplementing the Execution of punishments and pre-trial detention act, adopted on 27 January 2017, effective from 7 February 2017. The law brought changes also to the Criminal code and the Criminal procedure code. The amendments were preceded by the enactment in 2016 of other smaller-scale amendments to the national penitentiary legislation.

¹² *Bhc calls on the Sjc to renew the hearings of cases on complaints of prisoners, related to isolation, torture and cruel treatment*, 20 March 2020, at: <https://prisonreform.bg/bhk-prizovava-bss-da-vuzobnovi-razglejda-neto-na-dela-po-jalbi-na-lisheni-ot-svobo-da-svurzani-s-izolaciq-iztezaniq-i-jestoko-otnasqne/> (accessed 20 September 2020).

¹³ Information from Decision No. 1-3443 from 18 August 2020 of the Chief director for execution of punishments in response to a request for access to public information by the Bulgarian Helsinki Committee.

