# THEORETICAL PROBLEMS OF LAW AND POLITICS

# INFORMAL HIERARCHIES IN MODERN PRISONS: NATURE, MANIFESTATIONS, AND THREATS TO HUMAN RIGHTS

**Dmytro Yagunov[1]** iD **, D.Sc. in Political Science; PhD in Public Administration, Member of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Member of the Confederation of European Probation (CEP), Member of the Howard League for Penal Reform**
[1] *Eberhard Karls University of Tübingen, Tübingen,Germany*
Email: dmytro.yagunov@cpt.coe.int

**Abstract**
The modern discourse of informal prison hierarchies, which is limited only to classic categories like 'violence', 'ill-treatment', and 'inter-prisoner violence', is not sufficient for the complex analysis of contemporary person landscapes in prisons. For the purposes of preventing ill-treatment and inter-prison violence, it is necessary to have a broader look at the nature of these phenomena, where such a broader approach demands considering the economic and political aspects of informal hierarchies in modern prisons, as well as the issues of corruption.
From the European perspective, there is a sharp distinction between prison landscapes in post-Soviet and other states. In many European states, prison violence is a sphere of personal relations and personal habits of individual prisoners. In contrast, post-Soviet prisons have hierarchical and well-organised violence based on illegal economic activities, black markets, and extortion of money from prisoners. The latter situation is typical for post-Soviet states. Here, following our conclusions, we can take the pessimistic approach that in most post-Soviet jurisdictions, the State lost control over the prison system as it must be controlled according to contemporary international human rights standards. There is no doubt that such a State controls its prison system but does it for the aims of legitimized criminality, increasing the level of restrictions for prisoners. Finally, informal prison hierarchies undermine totally the main feature of the criminal law, namely the aims of criminal punishment. Instead of rehabilitation, incapacitation, protection of society and deterrence, we have only deterrence, but not the deterrence of potential offenders but the illegal deterrence of prisoners aimed at forcing them to join or at least to support informal prison hierarchies. The amalgamation of criminal and prison subcultures creates a very dangerous trend that also undermines basic principles of the protection of society, which are declared to be protected by the criminal justice system. The views expressed in this paper are those of the author and should not be interpreted as necessarily representing the official position of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) or any other organizations with which the author is affiliated.
**Keywords:** prison, prison system, torture, ill-treatment, informal prison hierarchies, organised crime, prison rituals, total institutions, prison gangs.

**Nature of prison subculture and informal prison hierarchies**

In the XXI century, informal prison hierarchies are one of the main problems in prison systems across the world. Prison gangs and other forms of criminal organisations retain control in prisons to varying degrees in a significant number of countries (Penal Reform International, 2023, p. 9). Informal prison hierarchies are *a fact* recognised by the authorities of almost all states. As a result, prison subcultures become significant and have serious impact even on free society and taxpayers (not to mention the prison system itself, prison staff, prisoners, and their families).

The phenomenon of informal prison hierarchies and corresponding prison (prison-criminal) subcultures is *global* and *universal* but has distinct political and geographical features. As far as Europe is concerned, organised violence among prisoners is most common in the post-Soviet countries. At the same time, states of Latin America, the USA, and South Africa are among the countries most influenced with informal prison hierarchies and the highest concentration of prison violence.

Despite the anti-state nature of informal prison hierarchies and the declared '*war on torture*', the simulacrum of prison subculture and the corresponding caste systems do not exist in a vacuum apart from states and their agents. In most cases, they are the result of tacit agreements between the upper castes of informal prison hierarchies and state agents where the upper echelons of the inmate world come to be occupied by those whose past behavior best symbolizes that which society rejects and who have most fully repudiated institutional norms (Irwin & Cressey, 1962, p. 144).

The external symbols of the prison-subcultural simulacrum *("argo", "codes of conduct", "definitions", "principles", nicknames, tattoos, "registration" procedures, slogans, etc.)* only mask the true economic, social and political nature of this phenomenon, which is aimed at the organised and permanent extortion of material assets from prisoners and other persons by representatives of the upper castes and/or obtaining financial or other material benefits from the organisation or support of criminal activities, with the direct or indirect assistance of agents of the state, which, in turn, is the ultimate beneficiary of such illegal distribution of material resources.

Even from this position, the classic views on the prisoner's informal code of conduct with the emphasis on directives such as "*don't interfere with inmate interests*", "*don't lose your head*", "*don't exploit inmates*", "*don't weaken*", and "*don't be a sucker*" in contemporary prisons are replaced with more detailed and complicated informal codes based on the illegal distribution of material resources and black markets in prisons (Irwin & Cressey, 1962, p. 144).

The simplified cinema-shaped figure of an informal prison leader as a violent, but at the same time independent '*right guy*' with his reference group, that consists of elite, sophisticated, career-type criminals, seems to have gone into the past (Irwin & Cressey, 1962, p. 144). As usually, as the ECtHR stresses in *Ashlarba v. Georgia,* the prison-criminal hierarchy has to fulfil four basic functions in order to maintain effective leadership in the criminal underworld: (1) an informational function (that is, the collection, analysis and evaluation of information on a wide range of topics, including those regarding specific individuals and events); (2) an organisational function (that is, planning of various specific activities and delegation of responsibilities to other members of the criminal underworld); (3) a normative-regulatory function (that is, dissemination of criminal ideology, romanticising of criminal life, recruitment of youth, maintenance of the Thieves' Code within the criminal community); and (4) a decision-making function (directing and coordinating the activities of other affiliated organised criminal group, such as housebreakers, racketeers, robbers, pickpockets, vehicle hijackers, kidnappers) (*Ashlarba v. Georgia,* 2014, para 23).

In many countries, members of prison gangs and other forms of informal prison hierarchies are engaged in a wide range of criminal activities, such as smuggling, murder, extortion, kidnapping, drug, and arms trafficking even outside the prison walls, creating an image of a modern-day Robin Hood and, as a result, using different tools for gaining political influence, including classic lobbying. Financially oriented criminal organisations claim the political power or, if they have it, the expansion of political power. As the ECtHR declares in *Ashlarba v. Georgia*, informal hierarchies have a particularly well-organised power structure, a strict system of subordination and control over its (criminal) members, but sometimes also over various sectors of society (*Ashlarba v. Georgia,* 2014, para 22).

In some countries, paramilitary groups are the strongest 'gangs' inside prison and outside prison (McEvoy, 2001; Butler, Slade, & Dias, 2018, p. 433). The paramilitaries groups are primarily delineated on political and religious lines. These groups were exported from the community into the prison system and their influence on the prison system waxed and waned depending on the wider political, social and economic

climate (Butler, Slade & Dias, 2018, p. 429). Therefore, it is not reasonable to analyse the problem of informal prison hierarchies and prison subcultures beyond the politics and broader political relations.

The mentioned above applies not only to Northern Ireland, but also to other countries in Europe and the world. In Brazil, political prisoners taught the ordinary prisoners how to organise to promote solidarity and use collective action to achieve their goals (Butler, Slade, & Dias, 2018, p. 435). As a result, using the 'Robin Hood' model in confronting the State, the main Brazilian gangs created a discourse of unity among criminals to 'confront the oppressive state through the unity of disadvantaged but equal and free people'.

Being hidden from the public agenda in many states, informal prison hierarchies undermine and sometimes even destroy efforts of the police, prosecutors, courts, prison administrations and taxpayers to control criminality and return prisoners to the society as law-abiding individuals.

Informal prison hierarchies and corresponding prison subcultures have gained *normative* significance in the UN reports, the ECtHR judgments, and the CPT reports. The mentioned above international actors have emphasised the explicit simulacrisation of this phenomenon and the existence of special power relations in the formation and implementation of local, regional and/or national prison subcultural norms.

For the aims of this paper, considering its European focus and the CPT mandate, it should be stressed that the CPT is, first and foremost, a mechanism designed to prevent ill-treatment effectively (*Report to the Government of Cyprus…*, 1997, p. 6; *Report to the Government of Cyprus…*, 2018, para 18, p. 16; *Report to the Government of Bosnia and Herzegovina…*, 2013, para 24, p. 18). The problem of violence and intimidation of prisoners in prisons in Europe because of the informal prison hierarchies has long been a matter of serious concern to the CPT (*Report to the Government of the Republic of Moldova…*, 2020, para 48, p. 27). Considering that violence and other forms of ill-treatment in prisons cannot be separated from the organised criminal activities, it is a part of the CPT mandate to develop the most effective measures how to make a safe environment in prisons and to prevent inter-prisoner violence.

For the needs of prevention and combatting ill-treatment in prisons, it is necessary to accept *the fact* that any total institution is a place with its unique subculture and power relations. In the rapidly growing literature on the social organisation of prisons, it has become common to discuss prison subcultures in terms suggesting that the behavior systems of various types of prisoners stem from the conditions of imprisonment themselves (Irwin & Cressey, 1962, p. 142).

According to the classic Goffman's definition of a total institution, the latter is defined as a place of residence and work where many like-situated individuals, cut off from the wider society for an appreciable period, together lead an enclosed, formally administered round of life (Goffman, 1961, p. 13). Of course, the prison subculture itself is both nurtured and diffused in different prisons of the state (Irwin & Cressey, 1962, p. 147). Here, a prison serves as the most obvious and socially accepted example of a total institution with a corresponding subculture, which can have a local, regional, national, or even international character. Therefore, the CPT accepts that informal hierarchy (or hierarchies), or the caste system, is still a key element of the prison life in many European prisons (Report to the Lithuanian Government…, 2023, para 39, p. 20).

The phenomenon of informal prison hierarchies must be addressed from different points and perspectives, considering the multidisciplinary nature of such a phenomenon. In its reports, the CPT considers numerous manifestations of prison subculture in European prisons – from the most obvious and dramatic examples of violence to less violent manifestations like informal distribution or self-distribution of prisoners in different units or cells in prisons (*Report to the Government of the Republic of Moldova…*, 2020, para 49, p. 28). In the latter example, the CPT makes a stress that in many prisons, informal leaders play a role in meeting requests for segregation from the general prison population (*Report to the Moldovan Government…*, 2023, para 26, p. 15).

Often, informal prison hierarchies and corresponding simulacrums of prison subculture are mostly of artificial nature, made or at least stimulated by the agents of the states. Informal hierarchies are created and supported within unofficial public policies aimed at controlling big masses of prisoners and related social groups. In its 2018 Report on Moldova, the CPT states that, Moldova's prisons have suffered for decades from an informal hierarchy of prisoners as a key feature of the prison subculture and the related problem of prison violence (*Report to the Government of the Republic of Moldova…*, 2018, para 13, p. 7). The definition of '*suffering*' reflects obviously the seriousness of the problem of informal prison hierarchy and the failure of the public policy to deal with it. In the 2022 Report on Moldova, the CPT also made a stress on well-established informal hierarchy in the national prison system (*Report to the Moldovan Government…*, 2023, para 2, p. 5).

Now, Russia is not a member of the Council of Europe. However, the Russian prison-subcultural complex demonstrates how it is possible to use massive groups of prisoners in the War against Ukraine. Moreover, during the Russian invasion of Ukraine, military regiments of Russian prisoners were shaped strictly based on prison subcultural norms. Corresponding military regimens were composed purely from the 'normal' informal castes, without 'untouchables'. Even more, the commanders of the Wagner Private Military Company openly declared that special and separate military regiments would be composed only of 'untouchables' according to the subcultural laws not to mix 'higher' and 'middle' castes with 'untouchables'.

Additionally, it is critically important to say that in the Russian case, the post-Soviet prison subculture has been used as a channel of pushing forward Russian imperialistic narratives through formal borders to other post-Soviet States since 1991. Such a channel was not stopped on February 24, 2002. Moreover, considering the war between Russia and Ukraine, the channel is enhanced for purely military and political needs of the Russian criminal regime.

Arguing about criminal subculture in general, it is urgently important to make the point that prison violence is mostly a hidden economic representation of organised crime activities in and outside prisons. In several reports, the CPT highlights the problem of racketeering by informal leaders or their inner circle (*Report to the Government of the Republic of Moldova…*, 2018, para 17, p. 8). A share of this money is distributed among prison officers in many jurisdictions across the world, including Europe.

Therefore, one of the basic points here is the factor of corruption among prison officers, which will be discussed below. As a concept, prison subculture is a simulacrum created to hide corruption in prisons and bad prison management, where violence and the atmosphere of all-encompassing fear are widely and regularly used to extort money from prisoners by prison officials and representatives of the highest informal castes in line with tacit agreements between staff and representatives of the criminal world.

Moreover, an atmosphere of prison violence is indirectly supported by many states, which makes every person in front of the prison gates to believe that he/she will be harmed (tortured, murdered, raped, humiliated) if he/she is not ready to pay 'black' money to prison staff or informal prison leaders for his/her safety.

### Methodology

The study employs a qualitative research design to explore the nature, manifestations, and threats to human rights posed by informal hierarchies in modern prisons. This approach allows for an in-depth understanding of the complex and multifaceted issues surrounding prison subcultures and their impacts on both inmates and the broader societal context. Data was collected through a combination of document analysis and expert interviews. The primary sources of data included reports from international bodies such as the European Committee for the Prevention of Torture (CPT), the United Nations, and the European Court of Human Rights (ECtHR); scholarly articles and books focusing on prison subcultures, criminal organizations, and human rights violations in the prison system; and national and international legislation, policy documents, and reform plans related to prison management and human rights. Expert interviews were conducted with professionals and scholars in the fields of political science, public administration, and criminal justice, as well as with members of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the Confederation of European Probation (CEP), and the Howard League for Penal Reform.

### Aims of organised criminal activities in the context of informal prison hierarchies

Prison subculture should be analysed as a form, sphere, and manifestation of criminal activities. In all prisons, criminal subculture is linked to organised crime (Penal Reform International, 2023, p. 9). Moreover, prison subculture is always about organised crimes. Prison subcultures exist within organised criminal activity and because of organised criminal activities.

Academic studies should be considered concerning the links between violence and gangs. According to academic research, in three of the five studies, there was a clear association between gang membership and the likelihood of engaging in prison violence in British prisons. However, the differences between core gang members, suspected gang members, and gang associates should be considered (McGuire, 2018).

Considering the economic nature of any informal prison hierarchy, it must be stated that the aim of a criminal association is to shape a parallel vertical of power in prison or even in the national prison system. Then, the aims could be different – from symbiotic existence together with formal prison

authorities to domination over formal prison authorities. In any case, as the CPT found, the traditions of the caste system dictate internal order and take precedence over official rules (Report to the Lithuanian Government…, 2023, para 39, p. 20). Accordingly, the prison administrations are not only aware of the existing informal hierarchical systems but are complicit in it, which makes any complaints by prisoners to the prison administration not only ineffective, but also dangerous in many jurisdictions (*S.P. and Others v. Russia*, 2023, para 22).

As far as the national governments are concerned, they often occupy a mostly passive position like it was shaped by the ECtHR in the iconic case of *S.P. and Others v. Russia*: "The Government neither confirmed nor denied the applicants' assertions regarding the existence of an informal hierarchy of prisoners and their place in it" (*S.P. and Others v. Russia*, 2023, para 81).

However, the exclusions can take place. For example, in the light of a real danger of transportation of the Russian prison and criminal subculture to Ukraine, the Ukrainian Strategy on the Reform of the Prison System for the period until 2026 and the approval of the operational plan for its implementation in 2022-2024 recognizes the existence of prison subculture and informal prison leaders in the Ukrainian prison system as one of the threats for the national criminal justice system (Verkhovna Rada of Ukraine, 2022).

### Self-governance in prisons

*Self-governance* in prison is a key definition for the analysis of informal prison hierarchies and corresponding simulacrums of prison subculture. Self-governance can range from self-organisation within a dormitory to total control of the prison by certain detainees, including disciplinary measures, with the authorities only controlling the outer perimeter of the prison. It can take a form of distribution of drinking water and food (*Report to the Government of the Republic of Moldova…*, 2020, para 68, p. 34). In any case, it leads to the gradual loss of control by authorities, which represents a major risk of violence among prisoners (Association for the Prevention of Torture, 2024). Here, we can also recall the classic example from the Soviet and post-Soviet 'experience' of the divisions of all prisons into '*black zones*' and '*red zones*' or well-known bloody wars between '*thieves*' and '*bitches*' in Soviet prisons.

On the other hand, the absence of visible evidence of self-government cannot prevent *lesser* forms of informal hierarchies and corresponding subculture (subcultures). It is no accident Mandela Rules state that no prisoner shall be employed, in the service of the prison, in any disciplinary capacity. Therefore, irrespective of declarations of prison administrations, any form of '*shared management*' based on the tacit agreements between the informal prison leaders and prison administration is evidence that the State has lost control over a concrete prison or even the entire national prison system.

The CPT also demands that any practices of delegating authority to informal prisoner leaders and using them to maintain order and security among prisoners must be stopped. All informal leaders and their close circle should be deprived of privileges not enjoyed by other prisoners, including in terms of material conditions; in this context, the separation of informal leaders and their inner circle from the rest of the prison population can be considered, based on an individual assessment of risks and needs (*Report to the Georgian Government…*, 2019, para 53, p. 29).

### Ritualisation in the context of prison subculture

The CPT has its legal standards that apply to different spheres covered by the CPT mandate. It is one of the most challenging tasks to shape standards in the sphere of prevention of violence in prisons created by prison subculture. The issues of prison subculture and informal hierarchies are some of the most difficult to identify and react to by the CPT.

Every total institution has its subculture and corresponding rituals*,* where the definition of 'rituals' is *not* of an exclusively academic nature. Penal Reform International and the Thailand Institute of Justice also argue that criminal organisations in and outside prisons have *highly ritualized codes of conduct* (Penal Reform International, 2023, p. 35).

In *Ashlarba v. Georgia,* the ECtHR stresses on the fact that the professional criminal underworld *elaborates initiation rituals* and *a code of conduct* (*Ashlarba v. Georgia,* 2014, para 22). In *S.P. and Others*, the ECtHR directly notes the ritualistic and symbolically humiliating treatment of 'untouchables' by other prisoners (*S.P. and Others v. Russia*, 2023, para 82).

The CPT mandate covers the manifestations of prison subculture, which demonstrate the pro-violent and aggressive nature of the subculture (emblems, flags, etc.). In the 2021 Report on Georgia, the CPT found obvious signs of the presence of an informal hierarchy, such as the typical symbols (in particular, the eight-

pointed stars of the '*thieves world*' and snarling wolves, also known as '*snarls'*), placed on the doors and walls of the cells are evidence of the violent atmosphere in the prison (*Report to the Georgian Government…*, 2022, para 12, p. 7).

The danger of the violent subcultural symbols is important for consideration from the point of creating and supporting an artificial mythologization of the prison subculture and enrolling of young people in the unofficial prison-criminal 'academies'.

Here it could be mentioned a very demonstrative ritual can be still found in post-Soviet prisons, namely '*a chifir drinking'* ritual, that means a ritual drinking of the strongest tea by many prisoners from the same cup, which can be considered as a legacy of Soviet prison subcultural norms. Such a ritual demonstrates that only '*equal*' men are sitting together. Furthermore, what is important to say, such a ritual demonstrates that there are no 'untouchables' among them and every person is trusted enough.

In addition to conditionally 'positive' subcultural symbols (from the point of view of representatives of subcultural circles), it is possible to point out conditionally 'negative' symbols and rituals.

For example, in many prisons visited, the prisoners' fear of 'downing the status' to the level of 'untouchables' is so great that upper caste prisoners are not even allowed to share a floor with the 'untouchables'.

Providing 'untouchables' with kitchen utensils of a different colour and/or with special informal markings is so well-known and typical for the prison systems of Georgia, Ukraine, Lithuania, Moldova, and other post-Soviet states. What needs attention is that in the XXI century, all these things still exist.

Moreover, in some jurisdictions, the CPT observed how 'untouchables' 'lowered' other prisoners from higher castes to a lower level, using bottles or spays with human or cat urine and faeces. Here, it is neither about disgust nor only about consequences for a prisoner. It is about a special ritual established and accepted by most of the prison population that occupies a special place in the structure of informal relations in prison. Such rituals need to be analysed for full understanding of the nature of violence in contemporary prisons.

### 'Hierarchy' and 'hierarchies'

The definition of a prison hierarchy must be used in *singular* or *plural* forms in relation to the concrete State.

It is obvious that in Moldova, Ukraine, and other Eastern European states, one should avoid using the definition of '*hierarchies'* because of the corresponding prison subculture of post-Soviet origin, the only vertical of informal power in every prison. Even in American literature, it is stated that "leadership [in Soviet prisons] is vested in "*toughs*" to a greater extent than is the case in American prisons because the orientation is more that of a prison subculture than of a criminal subculture in which men are bound together with a '*criminalistic ideology*'" (Irwin & Cressey, 1962, p. 145).

The most brutal and disgusting manifestations of prison subculture can be found in Russia, which has conserved the whole massive of the Soviet informal prison laws and regulations. As the ECtHR stated in the iconic case *S.P. and Others v. Russia*, the hierarchical system, the existence, and treatment of 'rogue' prisoners as a widespread practice in Russian prisons that has existed for decades and affected a significant number of prisoners (*S.P. and Others v. Russia*, 2023, para 85).

Some differences could be found in the Lithuanian prison system, where several verticals could be identified. Such a situation reflects two important features: 1) a more and more distance from Russia and the Russian political influence; 2) the presence of numerous drug-oriented gangs which control the drug market in and outside prisons and try to keep peace in prisons. At the same time, they share the same, a single prison subculture based on the Soviet prison-subcultural '*backbone'*.

In contrast, in other states which never experienced the membership of the USSR, the situation is different. Multinational prison population and informal prison leaders from different states make it impossible to develop a single prison subculture and a single informal vertical of power.

However, it does not exclude attempts of national-based or ethnic-based verticals to obtain more power over different prisoners of other nationalities. It is supported with open manifestations of their power. The Nicosia Prisons on Cyprus can be an example where the Georgian informal prison leaders openly declare their presence and power over all prisoners from the former USSR through their informal flag and emblems of the Georgian prison community.

Therefore, using of the appropriate form of the word – '*hierarchy'* or '*hierarchies'* is not the matter of theoretical or academic discussions but an issue of practically oriented approaches in combatting organised crime and violence in prisons.

**Physical violence**

Physical violence – assaults on prisoners or staff or inter-prisoner violence – has long presented a worrying problem in prisons. Although many people probably expect prisons to be unruly places, for them to serve their purpose in society it is important that they remain as safe and orderly as possible (McGuire, 2018).

In every prison, violence is a basis for the existence of informal prison hierarchies and simulacrums of corresponding prison subcultures.

Penal Reform International and Thailand Institute of Justice argue that where gangs or subcultures are dominant, violence rates in prisons are high (Penal Reform International, 2023, p. 35). However, prison subculture cannot in any case be narrowed to prison violence, as it was mentioned in the 2015 CPT visit to Moldova (*Report to the Government of the Republic of Moldova…*, 2018, para 13, p. 7). As the ECtHR, found in *Ashlarba v. Georgia*, *physical* presence is by no means a determining factor in the power and authority of criminal bosses (*Ashlarba v. Georgia,* 2014, para 23).

In contrast to many stereotypes, violent manifestations of prison subculture do not always have the form of torture.

Indeed, violence in the context of prison subculture can take the most brutal forms, like serious beating, rape or sexual violence. However, in the iconic case on prison subculture *(S.P. v. Russia),* the ECtHR found that the most brutal violations of the Article 3 of the ECHR were associated with continuous ill-treatment, not with torture. As the ECtHR states, the situation in which the applicants had been for years, because of being classified as '*outcasts'*, constituted inhuman and degrading treatment within the meaning of Article 3 of the Convention (*S.P. and Others v. Russia*, 2023, para 89).

In its reports, the CPT states that in many European prisons, prisoners regularly demonstrate injuries indicative of inter-prisoner violence, such as bruises around the eyes, as well as, to a lesser extent, more serious injuries. Virtually all cases of violence go unreported due to the atmosphere of fear and intimidation created in the facilities by prisoners at the top of the informal prison hierarchy, as well as a general lack of trust in the ability of staff to ensure the safety of prisoners (*Report to the Government of the Republic of Moldova…*, 2020, para 49, p. 28).

However, not only prisons in post-Soviet states are notable in the context of prison violence. In its 2021 Report on the UK, the CPT found that inter-prisoner violence remains a worrying phenomenon in English prisons (*Report to the United Kingdom Government…*, 2022, para 38, p. 23). Given the persistence of such episodes in prisons and their seriousness, the CPT recommended that the UK authorities would step up their efforts to combat the phenomenon of violence in prisons (*Report to the United Kingdom Government…*, 2022, para 38, p. 23). In its 32nd General Report, the CPT stated that most prisons in Greece still did not provide a safe environment for inmates (Council of Europe, 2023). In 2019, the CPT also found the same problem in Ireland.

**Sexual violence**

In any total institution, forced sexual submission can be a method that is employed without rationalization as a means of bringing the activities of another into one's own line of action (Goffman, 1961, p. 264).

In its 2018 Report on Moldova, the CPT delegation learned of three cases of alleged rape of young males in Chisinau prison (*Report to the Government of the Republic of Moldova…*, 2018, para 19, p. 8). In 2020, the CPT delegation found that some prisoners in Moldova even feared that they would be raped as punishment for the crimes of which they had been accused or convicted (*Report to the Government of the Republic of Moldova…*, 2020, para 51, p. 28).

For example, in its 2017 Report on Cyprus, the CPT declared that regarding the alleged attempted rape and the incident of sexual violence, the delegation demanded immediate measures to be taken for the relevant investigation. By communication dated 31 March 2017, the Cypriot authorities informed the CPT that the prisoner had been referred to a general hospital for examination (which found no evidence to support the allegations) and that the prison and the police were conducting separate investigations into the alleged incident. An internal investigation at the prison was completed, which resulted in a meeting with the prisoner, who concluded that because the prisoner was in good spirits and had no recollection of the incident, the case was closed. The CPT was not convinced of the thoroughness of such an internal investigation methodology. Furthermore, given the type of sexual assault alleged, the lack of forensic evidence in these circumstances did not disprove the allegation (*Report to the Government of Cyprus…*, 2018, para 77, p. 42).

### Verbal abuse and slaps

Prison subculture is not only about the most brutal acts of physical violence. It is also about verbal abuse, slaps, and punches.

For example, in the 2021 Report on Georgia, the CPT stated that several prisoners mentioned verbal abuse and threats (of physical violence and/or death against themselves and their families) by fellow prisoners in the three prisons visited, usually in the context of the prisoner's inability (due to lack of money or any relatives able to pay instead of him) or unwillingness to contribute to the informal collective prison fund (*Report to the Georgian Government…*, 2022, para 13, p. 7).

The example can also be found in the 2021 Report on Georgia, where the CPT stated that many prisoners were clearly afraid to speak to the delegation. In this context, it is not surprising that there was only one open statement of physical violence among prisoners, which took the form of punches in the face (*Report to the Georgian Government…*, 2022, para 13, p. 7).

Another example can be found in the 2017 Report on Slovenia, where the CPT states that slaps and punches are the forms of manifestations of domination in within the informal prison hierarchy (*Report to the Slovenian Government…*, 2017, para 37, p. 20).

### Humiliation and intimidation

Prison subculture is concerned with the permanent atmosphere of fear and intimidation that accompanies the life of the most prisoners in the 24/7 format. As the CPT stated concerning the situation in Moldova in 2020, prisoners considered 'untouchables' by the informal hierarchy continued to live in a state of constant fear and humiliation (*Report to the Government of the Republic of Moldova…*, 2020, para 51, p. 28).

In some jurisdictions, the CPT found that violence and intimidation between adult male prisoners constituted a single phenomenon shaping a largely unaddressed problem (*Report to the Moldovan Government…*, 2023, para 18, p. 12). As the CPT stated in the 2018 Report on Moldova, the root causes of the problem of violence among prisoners were far from being addressed and the institutions still largely failed to provide a safe environment, a fundamental requirement of prisoners (*Report to the Government of the Republic of Moldova…*, 2018, para 17, p. 8).

The humiliation practices are directly concerned with the presence of the informal caste of '*untouchables*'. The CPT states that the prisoners, who belong to the lowest caste in the prison hierarchy, were often subjected to physical and verbal abuse by other prisoners and forced to clean all premises, including common sanitary facilities. An informal '*code of conduct*' required them to avoid contact with other prisoners (and even their belongings) and to eat only at specially designated tables in the dining room. Some prisoners met by the delegation, including juveniles, indicated that they had to face constant humiliation due to being called 'untouchables' (*Report to the Government of the Republic of Moldova…*, 2018, para 18, p. 8).

### Exploitation

Prison violence and intimidation cannot be separated from *exploitation* of prisoners, where exploitation is a direct consequence of the existence of informal power structures (*Report to the Government of the Republic of Moldova…*, 2018, para 17, p. 8).

As the CPT found, prisoners are frequently forced to do '*dirty*' work (e.g. cleaning toilets and collecting garbage), and informal hierarchical rules require them to avoid any physical contact with other prisoners (*Report to the Government of the Republic of Moldova…*, 2020, para 51, p. 28). The ECtHR also places a special stress on the issues of exploitation of '*outcasts*' because of their status in the informal hierarchy of prisoners (*S.P. and Others v. Russia*, 2023, para 82).

In 2020, the CPT found that the prison subculture was not eradicated in Goyan Juvenile Prison, and a distinction can still be made between the caste of informal leaders and the 'untouchables' (*Report to the Government of the Republic of Moldova…*, 2020, para 59, p. 31). Prisoners of the latter category mostly worked cleaning communal toilets and corridors, and were only allowed to distribute food to other untouchables. Furthermore, like their adult counterparts, juvenile prison leaders used other prisoners to clean their cells and demanded a share of their food parcels in exchange for protection from other prisoners (*Report to the Government of the Republic of Moldova…*, 2020, para 59, p. 31).

Therefore, the CPT strongly recommends that persons convicted for the first time be kept separately from those who have previously served a prison sentence. However, this rule is not observed in many prisons.

Prisoners with no previous experience of imprisonment were the main target for exploitation, extortion, and manipulation by informal leaders (*Report to the Government of the Republic of Moldova…*, 2020, para 54, p. 29).

### New crimes

Prison subculture should also be analysed in different ways as a form, sphere, and application of criminal activities. Moreover, prison subculture is always about organised criminal activity. Person subculture exists within organised criminal activity and because of organised criminal activity. Therefore, person subculture cannot be analysed beyond producing new crimes in and beyond prisons.

As far as new crimes after release are concerned, "violence between prisoners or against staff can cause considerable physical and psychological harm, and, furthermore, violent indiscipline has been associated with increases in re-offending after release" (McGuire, 2018).

### Victimization

A safe prison environment is one of the main CPT standards (*Report to the Government of Cyprus…*, 2018, para 78, p. 42). Every prison in any democratic state has the task of eradicating the phenomenon of inter-prisoner violence (*Report to the Hungarian Government…*, 2020, para 48, p. 26). The lowest-caste prisoners suffer the most from this, as most of the reports of violence among inmates come from them. Being 'untouchable' meant significantly higher risks of becoming a victim of violence ((*Report to the Lithuanian Government…*, 2023, para 39, p. 20; *Report to the Government of Cyprus…*, 2018, para 77, p. 42). The 'untouchables' must follow the orders of the upper caste inmates, whether it is committing new crimes, breaking prison rules, or buying drugs or other things. Furthermore, when they are hit, they are not allowed to hit back (*Report to the Lithuanian Government…*, 2023, para 39, p. 20).

Therefore, the duty of prison administration of care to prisoners under their control includes the responsibility to protect them from other prisoners who may intend to harm their needs (*Report to the Georgian Government…*, 2019, para 52, p. 29).

Groups in situations of vulnerability are minors, persons with disabilities, LGBTI persons, foreigners, minorities and indigenous people and women.

*Minors* are particularly exposed to risks of violence, especially in the form of bullying by their cellmates, and can be more prone to trying to manage their conflicts with the use of force. Minors in detention are also exposed to the risk of gang involvement prisoners (Association for the Prevention of Torture, 2024).

*Persons with physical or mental disabilities* are at high risk of abuse and violence by their fellow inmates. They are also at higher risk of sexual abuse, including rape (Association for the Prevention of Torture, 2024).

*LGBTI persons* are extremely vulnerable to the risk of abuse by their fellow inmates. Often marginalised in prison, where macho attitudes are predominant, LGBTI individuals may be subject to humiliation, extortion, psychological and physical abuse, and rape, particularly in areas where detention staff is low, such as dormitories, showers or during walks in the yard prisoners (Association for the Prevention of Torture, 2024).

*Foreign prisoners and prisoners belonging to minorities or indigenous peoples* may become victims of violence because of their difference, whether it is their minority status, ethnicity, religion, skin colour, etc. (Association for the Prevention of Torture, 2024). In Ireland, for example, although members of the *Travellers* community only account for 0.6% of the overall population, they account for 22% of the female prison population and 15% of the male prison population. The disproportionate representation of *Travellers* in the prison system is not a situation that is unique to Ireland.

*Female prisoners* face the risk of being victims of violence committed by their fellow inmates. Before being incarcerated, they are often victims of domestic violence and sometimes belong to a gang prisoners (Association for the Prevention of Torture, 2024).

The CPT recommends that the management of the prison system must review the policy on the prevention of violence among prisoners to implement measures for more adequate and accurate detection, response, investigation, and implementation of measures to prevent violence. This should include the adoption of a comprehensive anti-bullying policy and a systematic risk assessment of the allocation and placement of prisoners. This should also include training staff to take proactive measures to detect signs of any risk of violence among prisoners, as well as regular monitoring of CCTV cameras and ensuring they are properly maintained (*Report to the Government of Cyprus…*, 2018, para 78, p. 42).

However, in many jurisdictions, the simulacrum of a prison subculture is a sphere of permanent organised criminal activities that fails to provide a safe environment for prisoners (*Report to the Moldovan Government…*, 2023, para 18, p. 12). Prisoners who are from a minority, for reasons of ethnicity, nationality, age and sexual orientation etc., find themselves in situations of extreme vulnerability. In these circumstances, it cannot reasonably be expected that all prisoners who have been victims of inter-prisoner violence (as well as any prisoner witnesses) will choose to come forward to expose the perpetrators (*Report to the Government of the Republic of Moldova…*, 2018, para 23, p. 10).

Moreover, informal prison hierarchies create an atmosphere of permanent and long-standing fear and victimization. As the CPT states in the 2022 Report on Moldova, several persons whom the CPT delegation tried to interview in the visited prisons were visibly frightened, asked to interrupt the interview or even refused to be interviewed altogether. They stated that this was due to the fear of reprisals they would surely face from representatives of the prisoners' informal hierarchy for speaking to the delegation (*Report to the Moldovan Government…*, 2023, para 21, p. 12).

In Georgia, the CPT found that the influence of the informal hierarchy of prisoners was extremely high. Among the signs of this influence, the CPT delegation mentioned the fact that many prisoners were clearly unwilling and even afraid to talk to the delegation needs (*Report to the Georgian Government…*, 2019, para 50, p. 28).

Due to the atmosphere of total fear created by the informal leaders and their close entourage, as well as the lack of trust in the staff's ability to ensure safety, individuals found by staff with injuries refused to provide explanations for the origin of their injuries or gave reasons that clearly did not correspond to the injuries found (e.g., "*fell out of bed*", "*fell on the stairs*", "*slipped in the bathroom*" or "*slipped in the toilet and fell on the wall*"). Other prisoners who may have witnessed the incident systematically claimed to have seen nothing (*Report to the Moldovan Government…*, 2023, para 21, p. 13).

Here, it should be noted that victimization in prisons due to the activities of informal prison hierarchies is of a prospective nature. Victimization of prisoners, where the central place is occupied with a loss or a danger of losing the status of a '*normal prisoner*', contains a long-life stigma. A prisoner, downed to the status of an 'untouchable' meets the real danger of being killed, tortured, raped, or humiliated even in a free society, considering his informal status received in prison previously. Here, the main 'guilt' of the prison system is that victimization received during imprisonment continues permanently after imprisonment.

No less important aspect of the victimisation in those prisons that are under the control of gangs or other forms of criminal organisations. The fear of victimisation that exists in prisons force people to join prison gangs (Butler, Slade, & Dias, 2018, p. 429). This aspect of the subcultural prisons world should be considered by prison administrations. Every failure of the State to protect a prisoner from violence and to take perpetrators of prison violence to the criminal liability stimulates prisoners to join the informal hierarchy, to seek their protection or at least to orient not on the prison administration but on the informal prison leaders.

It should also be pointed at another important link between victimization in prisons and informal hierarchies. Prisoners join or support informal hierarchies not only because they need protection from violence by the prison leaders. They join or support informal hierarchies because they choose *the best manager* in their obviously hard conditions. They choose *the best* actor who can effectively and efficiently solve all problems appeared in a prison.

For example, in the USA, David Skarbek found that a rapidly growing US prison population, combined with increasing numbers of younger and drug using prisoners, led to a breakdown in the inmate code and a growing demand for self-governance among prisoners (Butler, Slade, & Dias, 2018, p. 429; Skarbek, 2011; 2014; 2016).

A practical example can be found in the CPT practices. In 2020, in Moldova, the CPT found control of informal prison leaders over drinking water. In Taraklia prison, the supply of drinking water was paid for by the heads of the prison hierarchy (from the '*collective fund*'), who apparently also controlled the prisoners' access to drinking water (*Report to the Government of the Republic of Moldova…*, 2020, para 68, p. 34). Therefore, a question arises who *the best manager* is – an informal leader or the group of informal leaders or the State. If the State failed even with the supply of drinking water, why the prisoners should not seek *an alternative supplier*, accepting the informal rules as a result.

**The absence of ideal victims**

The ECtHR has shaped a prominent and massive case law that indicates clearly that the victim's behaviour before torture plays no role in justifying the perpetrator's behaviour.

Considering an issue of victims of prison violence, it must be sorted that there is a basic idea that a victim of torture always remains a victim of torture, irrespective of her/his previous behaviour *(97 members of the Gldani Congregation… v. Georgia, para 95; A. and Others v. the UK [GC], para 126; A.V. v. Ukraine, para 47; Aleksakhin v. Ukraine, para 49; Bekos and Koutropoulos v. Greece, para 45; Buglov v. Ukraine, para 68; Chember v. Russia, para 48; Cobzaru v. Romania, para 60; Davydov and Others v. Ukraine, para 262; Đorđević v. Croatia, para 137; Dybeku v. Albania, para 35; Egmez v. Cyprus, para 77; Enea v. Italy [GC], para 55; Feilazoo v. Malta, para 80; Gorbatenko v. Ukraine, para 105; Idalov v. Russia [GC], para 91; Iwańczuk v. Poland, para 49; Jalloh v. Germany [GC], para 99; Karabet and Others v. Ukraine, para 297; Khachaturov v. Armenia, para 81; Khokhlich v. Ukraine, para 162; Kobets v. Ukraine, para 40; Korobov v. Ukraine, para 63; Krastanov v. Bulgaria, para 51; Kucheruk v. Ukraine, para 131; Kudła v. Poland [GC], para 90; Lorsé and Others v. the Netherlands, para 58; Lunev v. Ukraine, para 90; Lutsenko v. Ukraine (№ 2), para 115; Mehmet Eren v. Turkey, para 33; Moiseyev v. Russia, para 121; Muršić v. Croatia, para 48; Naumenko v. Ukraine, para 108; Nazarenko v. Ukraine, para 124; Neshkov and Others v. Bulgaria, para 226; Nicolae Virgiliu Tănase v. Romania [GC], para 116; O'Keeffe v. Ireland [GC], para 144; Ogorodnik v. Ukraine, para 74; Oleksiy Mykhaylovych Zakharkin v. Ukraine, para 54; Ostrovar v. Moldova, para 76; Piruzyan v. Armenia, para 105; Pomilyayko v. Ukraine, para 45; Riad and Idiab v. Belgium, para 96; Rodic and Others v. Bosnia and Herzegovina, para 66; Sergey Antonov v. Ukraine, para 70; Sergey Savenko v. Ukraine, para 34; Serikov v. Ukraine, para 56; S.P. and Others v. Russia, para 78; Sylenok and «Tekhnoservis-Plus» v. Ukraine, para 66; Tarasov v. Ukraine, para 61; Teslenko v. Ukraine, para 83; Tymoshenko v. Ukraine, para 196; Ushakov and Ushakova v. Ukraine, para 77; Varga and Others v. Hungary, para 69; Vasiliy Ivashchenko v. Ukraine, para 76; Vladimir Romanov v. Russia, para 55; Wiktorko v. Poland, para 44; X. and Others v. Bulgaria, para 176; Yaremenko v. Ukraine, para 57; Z. and Others v. the UK, para 73; Zelenin v. Russia, para 38; Zhyzitskyy v. Ukraine, para 38).*

On the other hand, nothing forbids to analyse such behaviour for the aims of the prevention of ill-treatment.

The stereotypical '*ideal victim*' is innocent, helpless, not complicit in the offence and has no personal direct or indirect connections to the crime or its perpetrators. As developed by Nils Christie, the stereotype has the following six attributes: the victim is (1) weak (female, sick, old or young): (2) reputable; (3) blameless; (4) controlled by an evil perpetrator; (5) not acquainted nor related to perpetrator; and (6) self-identified as a victim. In sum, the ideal victim needs to be innocent and as vulnerable as possible (Christie, 1986; Walklate, 2007, p. 28; Smolej, 2010; *quoited in* Haverkamp, 2019, p. 55). Here, one of the main points could be that a *classic* scheme of short interactions between a perpetrator and a victim cannot apply to prison violence and prison subculture. We argue about informal hierarchies, where informal statuses and positions are *not* permanent. Prisoners can fly up and be downed in the context of informal relations in prisons. As the CPT practices demonstrate, several subgroups of 'untouchables' can exist in the prison. For the top-level prisoners, all of them are 'untouchable'. At the same time, 'higher' 'untouchables' can humiliate 'lower' ones the same way.

In some post-Soviet prisons, practices exist when an 'untouchable' prisoner 'jump' up from the lower caste. Such informal social lifts mean in no case that the former 'untouchable' would ignore subcultural norms.

Moreover, in many countries, even those prisoners who declare themselves free of prison subculture and are settled in separate '*free-of-subculture*' units adopt the same subcultural norms and use violence against 'untouchables' or other categories of prisoners.

Therefore, any analysis of the issues of prison subculture and informal prison hierarchies is *not* of a complex nature without mentioned above issues. Any policies and practical steps in the sphere of torture prevention is prisons based on the concept of an ideal victim could be ineffective from the beginning and even harmful for such steps and policies.

### Manifestations in other spheres

Prison subculture has many faces and manifestations, what makes it difficult to combat this phenomenon. No wonder that the CPT focuses on the numerous negative consequences that prison subculture has (*Report to the Government of the Republic of Moldova…*, 2018, para 13, p. 7).

A basic social arrangement in modern society is that "the individual tends to sleep, play, and work in different places, with different co-participants, under different authorities, and without an over-all rational plan" (Goffman, 1961, p. 5). In contrast, among other things, in total institutions, "all phases of the day's

activities are tightly scheduled, with one activity leading at a prearranged time into the next, the whole sequence of activities being imposed from above by a system of explicit formal rulings and a body of officials" (Goffman, 1961, p. 6).

There is no doubt that factors contributing to the establishment and persistence of prison subculture include lack of access to basic needs (Penal Reform International, 2023, p. 9). At the same time, regime restrictions in prisons create preconditions to avoid them and to bring to the prison life as many features of the life in the free society as possible. Informal prison leaders use these opportunities to spread influence and power over other prisoners.

Informal prison hierarchies always seek any opportunities to find any possible spheres where they can 'play' on difficulties of prison life and create alternatives for satisfaction of the prisoners' basic needs. Therefore, more restrictions imposed on prisoners by the state mean more channels of subcultural interactions, which, in its turn, mean more dependencies and debts. Consequently, more dependencies and debts create a more violent atmosphere.

The obligation to request permission or supplies for minor activities that one can execute on one's own on the outside, such as smoking, shaving, going to the toilet, telephoning, spending money, or mailing letters not only puts the individual in a submissive or suppliant role 'unnatural' for an adult but also opens his line of action to interceptions by staff (Goffman, 1961, p. 41). Instead of having his request immediately and automatically granted, the prisoner may be teased, denied, questioned at length, not noticed (Goffman, 1961, p. 41).

Highly controlling regimes can heighten tensions and induce stresses, potentially giving rise to conflict and assault (McGuire, 2018). This idea is critical to explaining the necessity of maintaining the balance in prisons. In general, the mentioned '*other spheres*' are directly concerned with formal restrictions: more restrictions have prisoners, more attempts and policies are used to counter them. Consequently, more opportunities are created to involve masses of prisoners into informal relations (for example, differences in prison regimes concerned with food supply and possibilities to cook food are used by informal leaders to impact the prison life).

As it was mentioned earlier, in some cases, even basic human needs are used within these channels of spreading of prison subculture. In Moldova, the CPT found control of informal prison leaders over drinking water. There were problems with the supply of drinking water in Taraklia prison, and that drinking water had to be transported by tankers and stored in a tank. However, it appeared that this process as managed, and the supply of water was paid for by the heads of the prison hierarchy (from the '*collective fund*'), who apparently also controlled the prisoners' access to drinking water. Indeed, many prisoners with whom the delegation talked complained about the lack of drinking water (*Report to the Government of the Republic of Moldova…*, 2020, para 68, p. 34).

### Staff and corruption

In the light of the classic Goffman's view, in total institutions there is a basic split between a large managed group (prisoners) and a small supervisory staff. Each grouping tends to conceive of the other in terms of narrow hostile stereotypes, staff often seeing prisoners as bitter, secretive, and untrustworthy, while prisoners often see staff as condescending, high-handed, and mean. Staff tend to feel superior and righteous; prisoners tend, in some ways at least, to feel inferior, weak, blameworthy, and guilty (Goffman, 1961, p. 7).

On the other hand, we have an important point: "We have no doubt that the total set of relationships called 'prisoner society' is a response to problems of imprisonment (Irwin & Cressey, 1962, p. 145). Therefore, it is not reasonable to blame the prison community for the existence of the informal codes, rules and rituals. The responsibility for any manifestations of the prison subculture, at least those that amount to the level of ill-treatment, is the responsibility of the State.

For the last decades, prison systems in Europe took a step from such state of things, trying to build the relations between staff and prisoners on the concept of dynamic security. The latter is permanently considered by the CPT as an effective tool of decreasing in the concentration of prison subculture and violence. Nevertheless, prison administrations must face the reality and recognize that the problems of relations between the staff and prisoners are a crucial one in shaping any recommendations to combat or to minimize the simulacrum of prison subculture.

With no doubt, every total institution has its unique subculture – sometimes local one, sometimes national or even transnational (e.g. post-Soviet states). The ideas of Erving Goffman, Philip Zimbardo and other researchers will not lose their importance until a contemporary 'rehabilitative' prison exists.

Nevertheless, prison subculture is of the simulacrative nature, and a simulacrum of prison subculture exists due to the activities of the staff. Therefore, it is impossible to discuss any issue of prison subculture beyond the role of the staff in prison life.

A simulacrum of prison subculture and *the privilege system* always run together. It is always a matter of how prison staff are involved in '*schemes'* in prison. The presence of a concentrated subculture in a concrete prison indicates a wide support for this phenomenon among prison staff. Correspondingly, an issue of prison subculture and a populist '*war on torture'* relate to the level of interest of prison officers in the existence of this phenomenon, in contrast to the declared efforts of the prison administration to counteract the influence of the hierarchy (*Report to the Government of the Republic of Moldova…*, 2018, para 14, p. 7).

In other words, prison subculture is not about prison subculture. Prison subculture is always about power relations shaped around corruption and black markets. As the ECtHR declares in *Ashlarba v. Georgia*, informal hierarchies of the post-Soviet states are based on purely materialistic interests (*Ashlarba v. Georgia,* 2014, para 22). In the 2017 Report on Slovenia, the CPT indicated clearly that incidents of inter-prisoner violence are almost exclusively linked to the existence of a black market for illicit substances, prescription drugs (especially substitution therapy drugs) and mobile phones, and the resulting debt of some prisoners (*Report to the Slovenian Government…*, 2017, para 37, p. 20). Therefore, it is not surprising that the CPT states that the informal hierarchy is an established element of the system ((*Report to the Government of the Republic of Moldova…*, 2018, para 21, p. 9; *Report to the Georgian Government…*, 2022, para 12, 13, p. 7; *Report to the Government of the Republic of Moldova…*, 2020, para 49, p. 28; *Report to the Moldovan Government…*, 2023, para 19, p. 12).

Even those acts of ill-treatment, committed by private individuals in prisons, are the results of corruption. In its reports, the CPT analyse corruption in a broader context of torture prevention, focusing attention on the normalization of relations between prisoners and the prison staff and underlying the need for taking prisoners away from the 'umbrella' of prison subculture: "Real efforts are being made to develop positive relationships between staff and prisoners and to ensure that no prisoner can exercise power over other prisoners" (*Report to the Government of the Republic of Moldova…*, 2018, para 14, p. 7).

The simulacrum of prison subculture is used by the prison staff to control the general prison population. However, prison subculture and corruption are of symbiotic nature. Prison subculture grows using the atmosphere of corruption in prison. At the same time, corruption stimulates the growth of subculture. Corruption also creates the atmosphere of impunity, when informal leaders have social grounds to say that activities of prison administration to keep order in prison have zero effect.

The states should change their attitude to corruption in prisons. A focus should be made not only on the 'economic' aspect of corruption and a negative impact on prison management. Corruption must be considered firstly as an instrument of building of subcultural relations in prisons.

Considering that any act of corruption builds a new level of informal 'dark' relations between prison staff and mostly representatives of higher castes, it makes impossible an effective system of complaints and creates a full circle of prison violence.

Corruption in the broader context of prison subculture can also serve as evidence of the weakness of the State. Powerful informal prison hierarchy or hierarchies emerge as the result of *tacit agreements* between informal prison leaders and the agents of the State, which was also highlighted by the CPT in its reports.

For example, in its 2018 Report on Moldova, that CPT states that a particularly striking example of such 'co-operation' between the prison authorities and the informal hierarchy was observed by the delegation in Soroca prison. During the interviews with prisoners, the CPT delegation met with a prisoner who was responsible for keeping records of all persons held in the prison. In particular, he had a register containing the names, dates of birth, length of sentence (together with the relevant articles of the Moldovan Criminal Code) and cell numbers of all prisoners held in Soroca prison since 1999. It quickly became apparent that this data was available not only to the prison authorities, but also to informal bosses of the prison hierarchy, who could immediately obtain basic information about each newly arrived prisoner, including the offences for which the person had been convicted. This, of course, greatly facilitated the immediate identification of prisoners who, due to their criminal past, fell into the category of 'untouchables' (*Report to the Government of the Republic of Moldova…*, 2018, para 20, p. 9).

In other post-Soviet prisons, the CPT also found examples of tacit cooperation between the prison administration and the informal prison hierarchy to maintain '*order'* among prisoners and ensure the '*smooth running'* of the institutions (*Report to the Government of the Republic of Moldova…*, 2020, para 49, p. 28).

In this respect, the CPT states that tacit co-operation between administrators and informal leaders in prisons has serious erosive consequences for the entire criminal justice system (*Report to the Government of the Republic of Moldova…*, 2018, para 21, p. 9).

Such arrangements inevitably undermine the respect of prisoners for the administration. In this context, it should also be noted that prisoners belonging to the highest echelons of the informal hierarchy continued to live extremely comfortable lives in prison with all possible amenities. It is again about a striking difference in conditions (mainly in terms of repair and equipment, but also in terms of occupancy rates) between the different areas of accommodation (*Report to the Government of the Republic of Moldova…*, 2018, para 21, p. 9).

Corruption among prison officers who support even the obvious features of prison subculture has long-standing consequences for the rest of the prison population, who loses the last hope for prison staff and fully accepts subcultural norms. It should also be borne in mind that for other prisoners, in particular juveniles, seeing 'bosses' living a luxurious life with all possible privileges and exclusive powers is a powerful incentive to join the criminal subculture and move up the informal career ladder through violence against others (*Report to the Government of the Republic of Moldova…*, 2018, para 21, p. 9).

Therefore, the CPT focuses enough attention on the issues of prevention of corruption in prisons.

For example, concerning Bulgaria and Armenia, the CPT reiterated its call on the authorities to continue their efforts to combat corruption in prisons (*Report to the Bulgarian Government…*, 2022, para 68, p. 39; *Report to the Armenian Government…*, 2021, para 58, p. 35). Prison staff and public officials involved in the prison system should be clearly informed that seeking undue advantage from prisoners or their relatives is illegal and will be severely punished; this message should be repeated in an appropriate form at appropriate intervals (*Report to the Bulgarian Government…*, 2022, para 68, p. 39).

Concerning Romania, the CPT focused on the issues of measures taken to combat corruption in prisons, including details of any measures of whistle-blower protection (*Report to the Romanian Government…*, 2019, para 128, p. 76).

Concerning Cyprus, the CPT declared that particular attention should be paid to the potential involvement of prison staff in the smuggling of prohibited items into prisons and illegal trade in prisons. In this regard, consideration could also be given to replacing cash payments in prisons with the introduction of internal 'bank' accounts for prisoners and electronic payments (*Report to the Slovenian Government…*, 2017, para 37, p. 20).

### Complaints

The CPT has a well-established position and a corresponding approach that all reports of inter-prisoner violence (regardless of whether the report takes the form of a formal complaint) must be thoroughly investigated by independent actors (*Report on the visit to Cyprus…*, 2008, para 61, p. 27). The CPT states that a failure to respond appropriately to complaints by prison authorities can foster an atmosphere in which those who wish to abuse prisoners can quickly believe – and with excellent reason – that they can do so with impunity *Report on the visit to Cyprus…*, 2008, para 61, p. 27).

As the ECtHR stated in *S.P. and Others v. Russia*, due to involvement of the prison administration into '*plays*' with informal prison leaders, the prison administration is not only aware of the existing informal hierarchical system, but was complicit in it, which made any complaints to the prison administration not only ineffective, but also dangerous (*S.P. and Others v. Russia*, 2023, para 22).

Consequently, the CPT points out that in such situation it is very typical that the staff 'earns' money received from top-level representatives of informal hierarchies and allegedly advised prisoners not to bring complaints to the delegation and that staff attempted to 'hear' prisoners interviewed by the delegation (*Report to the Government of the Republic of Moldova…*, 2020, para 8, p. 11).

Corruption, prison violence and impunity of acts of torture must be analysed together as a broader context. Any act of corruption – irrespective of the sum of a bribe – is *an investment* into informal hierarchies and violence. Corrupted staff is not only about black money. First, it is about violence because any informal relations between staff and higher castes means granting the latter *the indulgence* for future acts of violence.

### Prison subculture and the aims of the punishments

The simulacrum of the prison subculture, informal prison hierarchies and related caste relations fundamentally change the orientation of national prison systems from rehabilitative to punitive, undermining the already weak "*rehabilitative ideal*" (Yagunov, et al., 2023).

Prison subculture creates strategically negative consequences which more than seriously harms the prison system in general and the trust of the society in the criminal justice system. As a result, any idea of rehabilitation loses its importance and significance (*Report to the Government of the Republic of Moldova…*, 2018, Para 21, p. 9).

In the same way, the deterrent effect of imprisonment is virtually lost (*Report to the Government of the Republic of Moldova…*, 2018, Para 21, p. 9; *Report to the Georgian Government…*, 2022, para 12, p. 7).

In addition to contributing to the creation of an unsafe environment in places of detention, this situation distorts the purpose of imprisonment and the role of the prison system (*Report to the Government of the Republic of Moldova…*, 2018, Para 21, p. 9).

### Prison subculture as a permanent danger to human rights

The main danger of the prison subculture is its ability to self-reproduce, considering especially that young people are much more at risk of being 'enrolled' (voluntarily or otherwise) in an unofficial '*criminal academy*' (*Report to the Georgian Government…*, 2022, para 12, p. 7).

Therefore, any attempts and actions to combat the local prison subculture cannot be implemented beyond the corresponding national prison policy. Otherwise, it would not only effective but also create new risks for the lives and health of prisoners in a concrete national prison system.

The example could be found in the 2018 CPT Report on Georgia, where the CPT states that the re-emergence of this phenomenon in Prison № 15 is a worrying sign, and significant efforts are needed to ensure that it does not spread throughout the prison system needs (*Report to the Georgian Government…*, 2019, para 51, p. 29).

With this aim, the national prison administrations must act *proactively* to prevent inter-prisoner violence needs (*Report to the Georgian Government…*, 2019, para 52, p. 29).

### Conclusions

Trying to shape a complex view of modern prisons and prison systems, it is impossible to avoid prison hierarchies and violence produced by informal prison hierarchies.

In modern prisons, informal prison hierarchies of numerous types occupy a special place from the point of view of prison managers and international actors in the sphere of the prevention of torture and ill-treatment.

The modern discourse of informal prison hierarchies, which is limited only to classic categories like '*violence*', '*ill-treatment*', and '*inter-prisoner violence*', is not sufficient for the complex analysis of contemporary person landscapes in prisons. For the purposes of preventing ill-treatment and inter-prison violence, it is necessary to have a broader look at the nature of these phenomena, where such a broader approach demands considering the economic and political aspects of informal hierarchies in modern prisons, as well as the issues of corruption.

From the European perspective, there is a sharp distinction between prison landscapes in post-Soviet and other states. In many European states, prison violence is a sphere of personal relations and the personal habits of individual prisoners. In contrast, post-Soviet prisons have hierarchical and well-organised violence based on illegal economic activities, black markets, and extortion of money from prisoners.

Prison violence has many faces and manifestations. However, as soon as an independent reviewer finds evidence of any ritual codes of conduct in a particular prison system, one can be sure that the State has lost control over the concrete prison or even the national prison system. The existence of violent-based or violent-oriented rituals in prison means that such rituals have been implemented in prison with the aim of hiding the organised violence based on the permanent extortion of money and corruption.

The latter situation is typical for post-Soviet states. Here, following our conclusions, we can take the pessimistic approach that in most post-Soviet jurisdictions, the State has lost control over the prison system as it must be controlled according to contemporary international human rights standards. There is no doubt that such a State controls its prison system but does it for the aims of legitimized criminality, increasing the level of restrictions for prisoners.

Finally, informal prison hierarchies undermine totally the main feature of the criminal law, namely the aims of criminal punishment. Instead of rehabilitation, incapacitation, protection of society and deterrence, we have only deterrence, but not the deterrence of potential offenders but the illegal deterrence of prisoners aimed at forcing them to join or at least to support informal prison hierarchies.

The amalgamation of criminal and prison subcultures creates a very dangerous trend that also undermines basic principles of the protection of society, which are declared to be protected by the criminal

justice system. Informal prison hierarchies shape a very dangerous stereotypic view of prisons as useless places run under the control of professional organised criminals with international roots and connections, which, in turn, undermine the trust of taxpayers in the police, prosecution services and courts.

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